SENATE—*Monday, June 22, 1981*

(Legislative day of Monday, June 1, 1981)

The Senate met at 11 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, the Reverend Richard C. Halverson, LL.D., D.D., offered the following prayer:

Let us pray.

Almighty God, Thou art the Sovereign Lord of the universe. The planets in their courses obey Thee. Our spaceship Earth rotates and revolves according to Thy prescribed plan. Our most sophisticated space science is totally dependent upon Thine universal order.

Thou art the Sovereign Lord of history. The millennia, the centuries, the decades, the years, and the hours unfold according to Thy plan.

History's events, good or evil, serve Thy purpose.

Thou dost work in everything for good to those who love Thee and are called according to Thy purpose.—Romans 8: 28.

Thou art the Sovereign Lord of the nations. Empires rise and fall according to Thine economy. But Thou dost not work in a vacuum, Thou dost Thy work through people who seek Thy will. Help all in authority in this Nation to realize that Thy wisdom, Thy power are available to those who seek Thee. The problems we face are not too big for Thee. Nothing is too hard for Thee. Nothing is impossible to Thee. Thou dost hold the whole world in Thy hand.

Gracious God, give to the Senators and those who labor with them Thy wisdom and Thy power for this day. Let Thy will be done in this place as it is in heaven. In Jesus' name. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. Under the previous order, the majority leader is recognized.

THE JOURNAL

Mr. BAKER. Mr. President, I thank the Chair. I ask unanimous consent that the Journal of the proceedings of the Senate be approved to date.

The PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF BUSINESS

Mr. BAKER. Mr. President, I have no need for my time under the standing order. I will be happy to yield my time or any portion thereof to any Senator or to yield it back.

Before I do that, I point out there is a period for the transaction of routine morning business already ordered, following the recognition of the two leaders under the standing order and after the execution of the two special orders.

Mr. President, I might say, as well, that I have no need for my time under the special order, and I will be pleased to yield all or any part of that time to any Senator.

Does the minority leader have any need for any additional time?

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished majority leader. I have no need for additional time.

Mr. BAKER. I thank the minority leader.

Mr. President, does the Senator from Maryland have any need for part of my time?

Mr. MATHIAS. The majority leader is very kind this morning, but the Senator from Maryland has no immediate need for time.

Mr. BAKER. Or the Senator from Idaho? My time seems to be unwanted.

ORDER VITIATING TIME OF THE MAJORITY LEADER

Mr. BAKER. In view of that, Mr. President, I ask unanimous consent that the time allocated to me under the special order be vitiated.

The PRESIDENT pro tempore. Without objection, it is so ordered.

ORDER OF PROCEDURE FOR THE NEXT SEVERAL DAYS

Mr. BAKER. Mr. President, before I yield back my time remaining under the standing order, I wish to say one thing: I hope we can finish the Department of Justice authorization bill today. When we resume consideration of that bill the Helms second-degree amendment, a substitute amendment for the Helms first-degree amendment, will be the pending business.

After we do that or, if necessary, prior to the completion of the Department of Justice authorization bill, it is necessary for us to proceed to the consideration of the budget reconciliation bill which is on the calendar and available for action today, as I understand it.

I hope to be able to confer with the minority leader today, with his consent, to talk about whether we go to the reconciliation bill this afternoon or tomorrow.

It is not my intention to begin consideration of that bill until well into the day today in any event, but it is my hope that we can proceed to consider that bill either by consent or by motion late today or in any event early tomorrow.

Mr. President, shortly I shall also inquire of Senators on this side of the aisle about the number of amendments they have and whether they will require rollcall votes. A number of Senators are necessarily absent from the floor, at least for a part of the day today, and I would like to ascertain as best I can what amendments will be called up, how many will require rollcalls, and at least explore the possibility of arranging those votes, if any, which are ordered to accommodate the maximum convenience of Senators.

So if those who hear me now will let us know of their intentions in that respect, it would materially assist the leadership in trying to schedule the activities for today and tomorrow.

With that statement, Mr. President, I yield back my time remaining under the standing order.

SECRETARY DREW LEWIS

Mr. BAKER. Mr. President, I would like to take just a moment of the Senate's time this evening to extend my congratulations and my appreciation to Secretary Drew Lewis of the Department of Transportation on the successful culmination of his negotiations to avert a job action by the Nation's civilian air traffic controllers.

I have known Secretary Lewis for some time and therefore was not at all surprised by the resolution of negotiations with the air controllers. Secretary Lewis personifies the proper blending of patience, tenacity, flexibility, mediation, and conciliation so necessary to successfully negotiate such sensitive and crucial matters.

There surely could be no more sensitive and crucial a matter, Mr. President, than that of the air traffic controllers. As one who flies often, both in commercial and private aircraft, I full well understand and appreciate the magnitude of their duties.

Furthermore, as one who advances and supports the budgetary restraints mandated by President Reagan, I am equally cognizant and dedicated to a higher degree of fiscal integrity at the Federal level.

On both scores, I believe Secretary Lewis has succeeded. Following his personal supervision of some 44 hours of final negotiations, a contract was tentatively agreed upon which will both substantially address the concerns of the air traffic controllers and also remain within the budgetary guidelines specified by the President.

For that accomplishment—the avoidance of a labor dispute which could have severely impaired so many facets of American life—I again, for myself, and for all Members of this body and all Americans, wish to express my genuine admiration and sincere appreciation to Secretary Lewis. His was a difficult job done exceedingly well.

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The Senator from West Virginia.

DANGERS TO THE BUDGET PROCESS

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent to have printed an article which appeared in the Washington Post on yesterday, written by Mr. Stuart Eizenstat calling attention to the dangers to the budget process of including in the reconciliation bill legislation which has no budgetary impact but which otherwise would be brought to the floor in the usual course of things and debated and amended in accordance with whatever needs exist.

I think it was a good article and touched upon a subject that Senator PROXMIRE spoke on last week and in connection with which I had a few remarks. I recommend it to the attention of my colleagues.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

THE HILL'S BUDGET STAMPEDE: MISUSE OF THE 1974 REFORMS COULD TURN CONGRESS INTO A RUBBER-STAMP PARLIAMENT

(By Stuart E. Eizenstat)

The fate of Congress' bipartisan efforts to implement reforms in its budget-making process proves the Washington axiom that all solutions create new problems.

The Congressional Budget and Impoundment Control Act, enacted in 1974 to give Congress more power over the federal budget, is now being used in ways that will lead to precisely the opposite result: reduced congressional control and a shift of substantial additional power to the executive branch. Moreover, misuse of a once little-known provision in the act called "reconciliation" is doing exactly what Congress sought to avoid: undermining the role of its authorizing and appropriating committees and creating laws with inadequate consideration of the consequences.

Unless this misuse of "reconciliation" is curbed, members of Congress, of whatever political persuasion, will soon discover that they have dramatically altered the method by which Congress has legislated since the earliest days of the republic.

This is not an argument about defeating the Reagan administration's program; Congress has ample opportunity to act on the president's proposals. Nor is it an argument against providing presidents with more authority; as someone who served two presidents in the White House, I have considerable sympathy with the need for enhanced presidential power.

But the dramatic consequences of the budget actions soon to be taken by Congress in the reconciliation bill should occur only after careful consideration, with deliberate and well understood legislative procedures, not by short-circuiting critical parts of the legislative process.

The unintended uses to which "reconciliation" are being put; the possibility of a substitute, sponsored by David Stockman's Office of Management and Budget, being passed by the House within two weeks and undoing the work of House committees, and the hasty inclusion of substantive changes in authorizing laws without any budget savings—all undermine the intent of the 1974 budget act.

That law, one of the most important pieces of legislation in our history dealing with the structure of American government, was enacted a month before President Nixon's resignation, for two overriding reasons. First, Congress felt the president had unconstitutionally refused to spend money it had appropriated, thus weakening Congress's control of the purse strings. Second, Congress wanted to restore the capacity it had lost to the presidency to establish clear budget priorities, to reassert control over burgeoning spending and to adjust its decisions better to prevailing economic conditions.

Nowhere in that law or its history can anyone find an intent to short-circuit congressional control of spending and taxation—certainly not in its "reconciliation" provision. Indeed, the legislative history makes it clear that Congress intended to rely on its authorizing committees for policy decisions and on its appropriating committees to control spending—jobs they had performed well in the past.

A reconciliation was a process to be used late in the congressional term to reconcile actions taken by congressional committees on individual bills with overall and binding budget figures set in the second budget resoluton. As the Senate report accompanying the budget act noted, reconciliation permits "effectively the changes, if any, directed in the second required budget resolution."

The first budget resolution, setting earlier budget targets in mid-May, was not to be binding. It certainly was not intended to preempt the appropriations process. As the House report accompanying the act stated, the "first concurrent resolution on the budget would set tentative targets . . . to guide Congress during its subsequent consideration of the various spending bills," and it "would not restrict the processing of appropriations measures through Congress."

In fact, Congress explicitly rejected efforts to make the first resolution binding. As the House report again stated, after Congress "reviewed the many problems associated with early ceilings, we agree that targets offer the most workable approach to genuine spending control." This was in no small part because early spending limits "downgrade the utility of the appropriations process."

The budget act itself could not be more clear: Only after the second, binding resolution is enacted in September are the tax-writing, appropriating and authorizing committees to adjust revenue or spending programs. These changes are reported to the Senate or House Budget Committee, which "shall report to its house a reconciliation bill or reconciliation resolution, or both, carrying out all such recommendations without any substantive revision."

Yet this entire mechanism, designed to protect the integrity of the legislative process while allowing Congress to exert more control over the budget, has been overextended. The Congress is now, in June, working under a binding "reconciliation" provision included in the first budget resolution—even though there is nothing to "reconcile" at this early stage in the process.

How can this remarkable turnabout have occurred? While it may be legal—based on a catch-all provision in the budget act related to the first May budget resolution—it was never the intent of the budget act for binding reconciliation to be included with the first resolution.

Doing so is bad policy—but by no means a partisan one. Except for a fleeting use in 1976, it was the Carter administration in 1980 which first proposed—and a Democratic-controlled Congress which first accepted—use of a binding "reconciliation" at the early stage of the budget process. I doubt that anyone in the Carter administration foresaw this one-time action last year as precedent for what is being done now.

Stockman's OMB, through a reconciliation provision in the first budget resolution crafted by Reps. Phil Gramm (D-Tex.) and Delbert Latta (R-Ohio), has carried matters to new lengths:

Gramm-Latta is binding not merely for one fiscal year, as was the Carter bill, but for three. Thus Congress will be unable to review its decisions effectively for the foreseeable future.

Reconciliation instructions proposed by President Carter affected only appropriations bills and entitlement programs leading to direct budget savings. The Gramm-Latta instructions go further, directing congressional committees to reduce basic authorizations. This forces reductions in appropriations through the authorization process.

Stockman, together with some House members is preparing a substitute for the reconciliation bill now being compiled by the House Budget Committee, resulting from the cuts made by individual committees. This substitute is being written without a single congressional committee hearing. Known as "Son of Gramm-Latta," it would not only cut the budget differently from the responsible House committees but would include substantive proposals—such as block grants eliminating scores of federal programs—without such changes ever having passed through a committee.

These problems, moreover, are being compounded by the decisions of several congressional committees to use the reconciliation bill to make other substantive legislative changes unrelated to spending cuts. These include denying federally assisted housing funds to rent-control cities, amending major energy legislation, altering controversial environmental policies and significantly modifying the Community Development Block Grant program. Since a reconciliation bill is virtually veto-proof, it becomes a convenient place for such substantive legislation.

If Congress follows through with the Gramm-Latta reconciliation and accepts an OMB-sponsored reconciliation substitute, the effect would be dramatic. First, Congress would be throwing into question its independence in fashioning the budget, which more than any other measure reflects the priorities, values and direction of the nation.

Second, passage of a Stockman-sponsored substitute on the House floor would create something akin to a parliamentary system, in which the prime minister's legislative package is voted on with little committee action and limited capacity for modification. Here, the White House's basic legislative package, potentially including significant changes in the welfare system, Social Security and jobs programs, would be passed as part of the budget process, with limited floor amendments or floor debate under the terms of the budget act. (In the Senate, of course, one effect of this would be to prevent filibusters.)

In short, Congress would be forced to make the most sweeping changes in a generation in the substance of federal programs without going through the historic deliberative process to assure sound results or paying heed to the work of its own committees.

Third, the sound role played by the appropriations committees over the years will be significantly undercut. The Gramm-Latta reconciliation in effect says that the appropriations committees cannot be trusted to control spending and that Congress is incapable thereafter of reconciling appropriations bills to the budget.

Fourth, the budget committees would in effect become "super committees"—precisely what Congress sought to avoid in the 1974 budget act. The House report on that act specifically stated that the budget commit-

tees "must not be given extraordinary power in the making of budget policies." The budget committees have successfully walked a fine line through the budget process in their relationship with other committees. Altering this would be a serious mistake.

Last, joining reconciliation to the first budget resolution restricts Congress' ability to adjust to the inevitable changes in economic conditions which directly affect the budget.

At this point, the current reconciliation process has gone too far and too many committees have put extraordinary effort into complying with its directives to try to stop it in is tracks. But a number of steps can and should be taken.

"Son of Gramm-Latta" should not be accepted. Disapproval should not be for partisan reasons but because it further distorts the budget process and threatens the authority of every congressional committee, regardless of party majority. As with any other legislation, some amendments may be appropriate to the reconciliation bill. But if some believe the package as a whole is so unsatisfactory as to warrant restructuring, that should be done in the committees with the knowledge and experience to do the job properly, not by the blunt instrument of a floor substitute.

In addition, reconciliation in the future should not be be permitted to be used for changes in basic authorizations unrelated to budget savings and should not be a repository for substantive legislation. Next, the appropriations committees' process must be respected; appropriations committee chairmen are able men dedicated to budget discipline.

Finally, reconciliation in subsequent years should return to its rightful place—in the second budget resolution. It would be unfortunate if this could only be done by having to amend the 1974 act itself, which potentially would open the entire process to substantive changes. It would be preferable for Congress simply to reject any future proposal to include a reconciliation provision in the first budget resolution.

The new budget process has been built with bipartisan support. Its discipline is critical in an era of limited fiscal resources. But the process itself will be imperiled if reconciliation continues to be extended beyond its original design, threatening the authority and expertise of authorizing and appropriating committees. The budget act is too important for the nation's long-term economic vitality to be endangered by whatever short-term advantage may accrue to OMB and its allies by use of the reconciliation process in ways Congress never intended.

Mr. ROBERT C. BYRD. Mr. President, I yield back the remainder of my time.

RECOGNITION OF SENATOR ROBERT C. BYRD

The PRESIDENT pro tempore. Under the previous order, the Senator from West Virginia (Mr. ROBERT C. BYRD) is recognized for not to exceed 15 minutes.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Wisconsin (Mr. PROXMIRE).

Mr. PROXMIRE. Mr. President, I thank my good friend, the Democratic leader.

ARMS SALES POSE HAZARD TO U.S. PREPAREDNESS AND SPUR ARMS RACE

Mr. PROXMIRE. Mr. President, the rush is on—the rush to renew U.S. arms sales around the world. Having passed out of the era of paper restraints imposed by the Carter administration, the new policy seems clear. We will sell weapons to anyone, anywhere for any reason. We will sell to friend, foe, democratic, totalitarian, rich or poor. Distinctions make no difference.

Where we once sought to keep high technology weapons out of South America, now we seek to introduce them. Concerns over the nuclear proliferation attempts by Pakistan no longer stand in the way of arms sales there. If foreign sales have an adverse effect on U.S. defense readiness, then we look the other way and pretend they do not.

How ironic it is. Under the Carter administration there was strong rhetoric against arms sales but they continued almost at the same levels as before. Now even the rhetoric is gone and the green flag has been waved to the defense contractors to sell, sell, sell.

Never mind the long-term consequences of arms sales to the People's Republic of China—just start exporting. Forget nuclear nonproliferation, after all it is not our business anyway, the President said. So what if the new French Government has expressed interest, for the first time in memory, in restricting arms sales—it is time for us to accelerate.

In terms of sales to the Third World, the non-Communist nations sell twice as much as the Communist bloc. The United States and the Soviet Union supply about an equal amount. But within the Western nations, the United States outsells the French by 2.5 to 1; the British by 4 to 1; the West Germans by 25 to 1; the Italians by 30 to 1.

The type and amounts of equipment delivered to the Third World are staggering. The Soviets ship tanks in great quantity while the United States specializes in major surface vessels, and armored personnel carriers. Both nations export vast quantities of artillery, combat aircraft and surface-to-air missiles.

One of the truisms about arms shipments is that eventually they are put to use. Sometimes for self-defense. More often they are used to suppress local populations or to invade neighboring nations.

It is not only a policy without a plan but it can be a detriment to our own defense needs. We short change our own defenses in order to sell abroad and when we do sometimes our most sophisticated and valuable weaponry falls in the hands of our adversaries. We spent billions developing the F–14 and its Phoenix missile only to have it compromised to the Russians in Iran.

If we are not careful the same will happen with our newest fighter—the F–16—which apparently we intend to spread around the world. This is a shortsighted and dangerous policy.

Mr. President, I ask unanimous consent that a table and article from the New York Times of Sunday, June 21, 1981, be printed in the RECORD.

There being no objection, the material was ordered to be printed, in the RECORD, as follows:

THE HARDWARE STORE IS OPEN AND CUSTOMERS COME RUNNING

(By Judith Miller)

WASHINGTON.—The Reagan Administration has still not announced a policy on weapons sales, but last week it demonstrated that deeds can speak louder than words. Laying aside the policy of restraint preached by President Carter, within 24 hours it announced new arms-supply arrangements with China and Pakistan. A week before, plans were disclosed to sell F–16 jet fighters to Venezuela.

Under Secretary of State James L. Buckley, providing an advance glimpse of the new policy, told aerospace company representatives last month that sales of American weapons abroad "complement and supplement our own defense efforts and serve as a vital and constructive instrument of American foreign policy." In contrast to the Carter Administration's putdown of arms sales as "inherently evil or morally reprehensible," Mr. Buckley said, the new Administration would use arms transfers as an instrument of "facing up to the realities of Soviet aggrandizement." He said the goals of the new policy included enhancing the "state of preparedness of our friends and allies," revitalizing American alliances, fashioning "more coherent" policies affecting East-West relations and "buttressing our own defense production capabilities."

ADMINISTRATION GOALS MAY CONFLICT

The Buckley speech, though short on detail, outlined general standards for evaluating foreign requests for weapons. In assessing such requests, Mr. Buckley said, the Administration would consider the military threat facing the recipient, how the weapons would affect stability in tense regions and how effectively the recipient could use the arms.

Critics of the Carter policy, which ultimately came to be honored in the breach as much as in the observance, praised the new approach. But the sales of F–16's to Venezuela and Pakistan stirred concern and debate in foreign policy circles. Some analysts argued that the sales were questionable precisely because they appeared inconsistent with the Administration's goals as stated by Mr. Buckley. Pakistan and Venezuela had not previously had jet aircraft as advanced as the F–16's; officials privately wondered whether the planes could be quickly or effectively absorbed by either nation's military forces. Moreover, the officials added, the sales risked fueling regional tensions, in direct conflict with another of the Administration's stated goals.

The Air Force, in particular, objected that the F–16's were not an appropriate response to the military threats facing Pakistan, and certainly were not appropriate for Venezuela, which had sought 16 to 24 of the planes. The sales, the Air Force and the Office of Management and Budget also argued, might increase the cost of the planes and delay deliveries to American forces. Concern about the impact of the sales was expressed in an internal document prepared in April by the Defense Department's Office of Program Analysis and Evaluation. According to the memorandum, foreign sales of F–16's were having "an adverse effect on the readiness of U.S.A.F. [Air Force] units." Aerospace companies, the document said, were raiding United States military forces "for officers able to provide the training and support commitments that accompany such sales."

"This may be very good for G.D.," the document stated, referring to General Dynamics, builder of the planes, "but it seriously threatens U.S.A.F. F–16 support ability." The Pentagon memo also warned that the sale of the F–16's to Venezuela—Peace Delta, as the project is called—might "generate demands from other countries in the region that they also must have F–16's as a symbol of U.S. esteem and trust."

As the document had forecast, proponents of the sale of F–16's to Pakistan argued that the Administration could not offer smaller, less costly F–5 fighters, although many officials believed they were better suited to Pakistan's military requirements, because it had just approved the sale of F–16's to Venezuela.

Even more serious concerns were generated by President Reagan's decision to supply "lethal" arms to China. Senior officials argued privately that the announcement would "confirm the worst fears" of hard-liners in the Kremlin, thereby intensifying the chill in Soviet-American relations and possibly reducing the Administration's ability to deter Soviet military intervention in Poland.

PEKING OPPOSES JETS FOR TAIWAN

Other controversial arms sales under consideration include proposals to sell advanced jets to South Korea, Taiwan and Austria. Resistance in Congress to at least some of the sales is expected. Last week, for example, the entire House Foreign Affairs Subcommittee on East Asia, headed by Representative Stephen J. Solarz, Democrat of New York, signed a letter to President Reagan urging him, "in the light of our national interest," not to sell the FX fighter plane to Taiwan. Peking has adamantly opposed the deal. The Administration also faces stiff opposition to plans to sell Saudi Arabia AWACS electronic surveillance planes and equipment that would expand the capabilities of its American-supplied F–15 fighter planes. Many Congressmen fear that the Saudi sales would damage Israel's security.

Administration officials respond that many of these sales were initiated by the Carter Administration, which they argue was ultimately forced to abandon the substance, if not the rhetoric, of restraint. The Carter policy, which portrayed arms sales as an "exceptional" foreign policy instrument, was widely criticized. Opponents on the left complained that the policy was hypocritical. The Administration countered that some sales were required to support allies and friends as well as to reduce trade deficits and to pay for oil imports. Conservative critics saw the restraints as naive and detrimental to American weapons producers.

Indeed, when the Carter Administration at first exercised restraint, other countries did not follow its lead. Negotiations to make the restraints multilateral stalled in 1978 and weapons sales to the third world by the Europeans and the Soviet Union soared. In a 1980 report, the Senate Foreign Relations Committee concluded that, while the Carter Administration had effected modest reductions in United States arms exports, the policy had been "oversold." The committee advocated a "balanced policy," which would combine "elements of restraint with an understanding that prudent arms transfers can serve important foreign policy and national security functions." Administration actions last week left some officials asking whether the pendulum had swung too far.

THE ARMS MERCHANTS
WEAPONS SALES TO THE THIRD WORLD[1]
[In millions of current U.S. dollars]

	1974	1975	1976	1977	1978	1979
Total	23,521	22,329	21,394	27,356	24,198	29,978
Non-Communist total	16,581	17,979	14,254	17,606	20,458	19,258
United States	11,921	11,614	10,669	9,976	11,268	10,388
France	2,030	2,300	1,025	2,800	2,500	4,000
Britain	760	1,400	630	1,550	1,800	2,420
West Germany	725	790	360	1,170	2,220	400
Italy	425	990	220	960	1,360	360
Other	720	885	1,350	1,150	1,310	1,690
Communist total	6,940	4,350	7,140	9,750	3,740	10,720
Soviet Union	5,900	3,600	5,900	9,000	2,900	9,800
Other	1,040	750	1,240	750	840	920
Dollar inflation index (1974=100)	100	109	118	127	136	148

[1] Foreign data are for calendar year; U.S. data for fiscal year. Prices include sale of weapons, construction, military assistance and spare parts. Third World category excludes Warsaw Pact, NATO countries, Europe, Japan, Australia, and New Zealand.

TYPES OF WEAPONS DELIVERED (1973–79)

	United States	Soviet Union	Western Europe
Tanks and self-propelled guns	7,007	12,565	2,395
Artillery	4,341	5,675	975
Armored personnel carriers and armored cars	14,071	10,545	3,425
Major surface ships	89	7	24
Minor surface ships	162	135	264
Submarines	19	9	24
Guided missile boats	0	82	30
Supersonic combat aircraft	1,452	2,950	475
Subsonic combat aircraft	924	580	57
Helicopters	1,352	940	1,500
Other aircraft	973	385	945
Surface-to-air missiles (SAM's)	8,935	19,495	945

Source: U.S. Government.

SOCIAL SECURITY—A SUPERB ACCOUNT

Mr. PROXMIRE. Mr. President, yesterday's Washington Post included an article by Spencer Rich which is about the best and most balanced account of the problems of the social security system, the proposals put forward by President Reagan and Secretary Schweiker, and the extent to which the problems have been exaggerated.

It is a superb account.

Spencer Rich has followed this issue closer than almost any other national reporter. As usual his report is thorough, objective, and accurate. He has read the documents, followed the hearings, and interviewed the experts. As is true of so many issues and problems, a thorough understanding of them leads almost automatically to the answers.

There is a problem with the social security system. But it is nothing as large as the President and the Secretary have stated. There are answers to the problem as well. But they need not be as draconian as the administration proposed.

For both an articulate and superb outline of the problem and some of the answers, I commend Spencer Rich's article "Social Security: Patching Up The Safety Net" to the Senate and the public.

I ask unanimous consent that the article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

SOCIAL SECURITY: PATCHING UP THE SAFETY NET

(By Spencer Rich)

Social security, which will pay out $164 billion in cash aid to 36 million people next year, is the nation's largest and most successful social program.

But while Social Security has done marvelous things for America, rescuing the aged from poverty and protecting the disabled from destitution, it is in trouble.

Nobody looking at the deficit projections for the old-age trust fund is complacent. A year or so down the road, the fund simply won't have enough income from the payroll tax to meet all its obligations.

That wasn't the way it was supposed to be when Congress in 1977 legislated a stiff new schedule of payroll taxes, the largest peacetime tax increase of any type in history. That increase was widely trumpeted as guaranteeing that the old-age and disability trust funds would stay in balance well into the next century.

Now, only four years later, the program is facing a funding crisis with predictions that some time in 1982, the cash window for the old-age program will be closed, and tens of millions of people whose economic security absolutely depends on Social Security will get truncated benefits or none at all.

"The question before Congress is whether the 36 million Americans who currently depend on the Social Security system can count on any check at all less than two years hence," Office of Management and Budget Director David Stockman warned a House subcommittee recently.

"The most devastating bankruptcy in history will occur" some time in the fall of 1982, he predicted.

That is pretty strong language and a great national debate has now begun over just how sick the system is, how it got that way and how to fix it.

J. J. Pickle, the Texas Democrat who heads the House subcommittee on Social Security, repeatedly has said he believes the old-age and disability trust funds are going to need about $100 billion more over the next five years than will be produced by the payroll tax that is levied 50–50 on employers and employees.

Two of the nation's most unyielding opponents of cuts in Social Security, former commissioner Robert Ball and former HEW secretary Wilbur Cohen, think this figure is way out of line, far too high, based on an exceptionally pessimistic view of developments in the national economy.

And the administration, in what can only be called a fit statistical schizophrenia, has declared that the economy will do so well that, actually, Social Security will need only about $11 billion extra over the next five years to pay all benefits and build up trust fund reserves a bit—but then has turned around and asked for $82 billion in cuts.

Social Security has become the main income transfer mechanism in the economy, taking billions of dollars each year from workers through the payroll tax and transferring the money to those forced out of work by disability and age and to survivors of workers who died.

It operates on a pay-as-you-go basis, keeping only enough money in the trust funds to pay a quarter or half a year's benefits. The taxes of people working today are used to pay off the benefits of the generation now retired; and when today's workers retire, their benefits will be paid by the next generation of workers.

Eligibility and monthly benefit amounts are related to how much a person earned in jobs covered by Social Security during his working life; but, unknown to most people, the benefit structure is highly progressive, favoring lower-income workers.

A person who worked all his life at around the minimum wage will have benefits under existing law equal to about 55 percent of his final year's salary prior to retirement. One who worked for average pay during his lifetime (about $13,800 a year at present) will have benefits of about 41 percent of his final year's pay. And one who worked at the maximum taxable wage all his life will get benefits equal to about 28 percent. (The system was designed to provide part of a person's income in retirement, but not all of it.)

On the other hand, the tax structure is regressive, weighing more heavily on the low-income person because there is a ceiling on taxable wages.

This year, for example, the ceiling is $29,700. A worker earning $10,000 a year pays 6.65 percent of his earnings, or $665, in Social Security taxes. But a worker earning $50,000 only pays 6.65 percent of the first $29,700, or $1,975 in Social Security taxes. His tax on his overall $50,000 income is only 3.95 percent. And of course, he gets credit only for the $29,700 on which he paid.

Until 1972, there was no provision in law

for automatic annual cost-of-living increases for Social Security beneficiaries and it was the common practice of Congress in the 1950s, 1960s and early 1970s to raise benefits periodically, often in election years, to help keep benefits up with inflation. This was easy to do, even without massive tax increases, because the system, having started only in 1935, didn't yet have a full complement of beneficiaries on the rolls.

Partly because of these increases and partly because of the "maturing" of the system and the widening of the scope of benefits brought more people onto the rolls, the number of elderly people below the poverty line fill dramatically. In 1959, the poverty rate for people 65 and over was 35.2 percent; by 1979, it was about 15 percent.

Social Security had more to do with lifting people out of poverty than all other programs combined; in 1976, it was estimated, three-fifths of the elderly got at least half their income from Social Security payments. That doesn't even count millions of younger people who are on the rolls because they are disabled or are the children or dependents of disabled or deceased workers; all told, one American in seven is dependent on Social Security.

Partly to restrain its own instincts for increasing benefits, since the elderly were becoming an increasingly potent political bloc (and more so today), Congress in 1972 moved to put the system on automatic pilot, providing for automatic "indexing" (annual increases based on wages and costs of living) of both taxes and benefits.

The cost-of-living feature for persons who are already retired and receiving benefits is an absolutely crucial security protection for the aged and disabled, who generally are less able to work and have fewer ways to make up income loss when inflation hits. It guarantees that the value of your Social Security benefit will not shrink to a pittance because of inflation, as is often the case with private pensions which seldom have an automatic cost-of-living provision.

The underlying assumption of the indexing decision was that productivity in the United States would continue to increase rapidly and that wages would therefore rise faster than prices each year. That would provide Social Security with enough tax income from wages to pay for anticipated benefits.

But this hasn't happened. Basically, the reason Congress and the president are facing a crisis is that the planners in 1977 made a terrible booboo, not just those in the Social Security administration but all the top economists government-wide.

They simply failed to foresee the soaring inflation and high unemployment that began only a year or two after President Jimmy Carter had happily placed his signature on the 1977 Social Security bill.

With price increases outrunning wages, indexed benefits began growing much faster than expected; and with unemployment higher than expected, payroll tax income to the system grew proportionately slower.

This collapse in the growth of productivity in the economy is unusual and isn't expected to continue long, but for the moment it has produced Social Security's short-term problem, the one evoking all the immediate hysteria; a shortfall of money in the old-age and survivors' insurance trust fund a year or so down the road.

But there is also a long-term problem, though it won't become serious until after the turn of the century. As the post-World War II baby boomers move through the system and eventually retire starting in 2005, there will be a huge load of beneficiaries and a relatively shriveled active labor force (because of low birth rates after the boom ended) to support them. Today the aged constitute about 11 percent of the population; this will rise to about 16 percent in the first quarter of the next century.

Today there are about three active workers contributing payroll taxes into the system for each retiree; by the end of the first quarter of the next century, the ratio is expected to be 2 to 1.

Since Social Security is essentially a pay-as-you-go system, this could mean a crushing tax burden on the active labor force to support the retirees. Of course, the demographics could change and the picture could turn out to be less troublesome than it now looks, especially since people will also have fewer children to support and might find it easier to pay taxes to support the elderly; but the outlook is certainly for heavy burdens.

These developments set the stage for President Reagan's call for sharp reductions in Social Security benefits for those first going on the rolls after the end of this year. Instead of raising more money by raising payroll taxes or by infusing general Treasury revenues into the trust funds to meet the deficit, Reagan prefers to cut benefits by $82 billion over the next 5 years.

The Reagan proposals include, for starters: elimination of the $122 a month minimum benefit; elimination of the student benefit (normally a dependent minor goes off the rolls at age 18, but he can keep on another four years if in college), and elimination of the $255 lump-sum burial benefit in some cases. In addition, Reagan would:

Change the basic formula for future retirees, so that a worker making the average salary would have an initial benefit equal to about 38 percent of his final month's wage instead of 41 percent. This represents a cut of about one-twelfth in basic benefits. It would save many billions and is the biggest saver among all the Reagan proposals.

Sharply reduce eligibility for Social Security disability insurance, cutting back the program by about a third and forcing many disabled to seek welfare.

Drastically reduce benefits for persons choosing to retire in the future before reaching 65. At present, an individual retiring at 62 (the minimum age) gets benefits equal to 80 percent of the amount he'd get at 65. The Reagan plan cuts this to 55 percent. Combined with the basic benefit formula change, this proposal would mean some future age-62 retirees would receive 43 percent less in monthly benefits than under current law and some would retire with a benefit permanently cut to only one-fifth of their final paycheck.

Carry out a Reagan campaign pledge and remove altogether by 1986 the current $5,500 annual limit on what a retiree of 65 or over can earn without any loss of Social Security benefits. The added cost to the trust funds would be offset by the proposed cuts.

Most of these changes would not affect people already on the rolls, and would apply only to future retirees, a point repeatedly stressed by Reagan. But the elimination of student benefits and minimum benefits and a three-month postponement of the 1982 cost-of-living increase would be applicable to those already on the rolls as well as to future retirees.

The Reagan proposals brought a firestorm of protest from Cohen, Ball and organizations representing millions of workers and beneficiaries.

Cohen and Ball called the cuts savage and Draconic and far deeper than needed just for the solvency of the system.

The whole argument turns, essentially, on what you expect to happen in the economy, and on that, Cohen and Ball would seem to have a point even if you don't swallow their whole argument.

Take the short-run problem first. Reagan's official, optimistic projection is that unemployment will be dropping below 6 percent by 1986 and inflation to 4.2 percent by 1986.

Under the administration's own calculations, if indeed this proves to be the case, then Social Security will be able to pay all benefits and build the trust funds rapidly up to a 17 percent reserve merely by allowing borrowing among the three trust funds and finding $11 billion in cuts or new revenues from 1982 to 1985. Yet the administration has asked for cuts that will total $82 billion over those years. It says the extra $70 billion could be used to build the trust funds up to an even larger reserve.

Let's say they really don't have that much confidence in their rosy projections. Under their most pessimistic scenario, unemployment will be nearly 10 percent in 1983 and inflation won't drop below 10 percent until 1986; in that case, Social Security would need roughly $111 billion in new funds or cuts over the next five years to stay solvent and build up trust fund reserves substantially.

SOCIAL SECURITY TAXES: EMPLOYER AND EMPLOYEE (EACH)

Year	Rate (percent)	Maximum taxable wage	Maximum amount paid
1967	4.4	$6,600	$290.40
1970	4.8	7,800	374.40
1975	5.85	14,100	824.85
1978	6.05	17,700	1,070.85
1980	6.13	25,900	1,587.67
1981	6.65	29,700	1,975.05
1982	6.70	[1] 32,100	[1] 2,150.70
1984	6.70	[1] 39,000	[1] 2,613.00
1985	7.05	[1] 42,300	[1] 2,982.15
1986	7.15	[1] 45,600	[1] 3,260.40

[1] Estimated.

But this short-run scenario seems unduly pessimistic. Inflation and unemployment already are both substantially lower than envisioned in the pessimistic scenario. Unless Reagan wrecks the economy, things will be better in the 1980s than the pessimistic scenario assumes.

In short, the administration is probably asking for too big a cut to meet the immediate crisis (and, of course, you could also meet it by raising taxes or infusing general revenues instead of cutting). Interestingly enough, Stockman all but conceded that the $82 billion figure may be too high when he told a congressional committee that the real size the next five years probably will be somewhere between the $11 billion figure and the $111 billion.

The same analysis holds for the long-range deficit. There is very little reason to use either the most optimistic demographic and economic assumptions or the most pessimistic in judging the system's financial condition beyond the turn of the century.

The pessimistic assumptions, after all, assume virtually no growth in the productivity of the economy for the next few years and an extremely low rate beyond that.

As in the past, the Social Security Administration has made its long-range forecasts using the middling projections, as seems the most prudent, but then, inexplicably, it has asked for cuts totaling almost exactly twice as much as needed to cover the projected long-range deficit.

For both the short term and long term, the administration justifies its request for cuts bigger than really seem to be needed by saying an extra margin of safety is being sought, in case the economy turns out worse than hoped.

That is a reasonable argument, but the proposed cuts are so far out of proportion to what seems to be needed except in the most pessimistic case (they even allow for cancellation of part of the scheduled 1985 So-

cial Security tax increase) that one suspects there is something more at work here.

One suspicion is that what Reagan is really seeking to do here is balance the overall federal budget at the expense of Social Security benefits. Stockman actually has made no secret of the fact that he expects horrendous difficulties in balancing the budget and that Social Security can make a contribution to this process. Secretary of Health and Human Services Richard S. Schweiker, on the other hand, has denied that general federal budget matters were involved in his recommendations on Social Security, saying he simply wanted to have an extra margin of safety in case the economy turns sour. Yet the suspicion remains.

There is something more. Some of the economists and advisers clustering around the Reagan administration seem to have an ideological vision of Social Security as properly a leaner system than now, relating benefits more to how much you pay in and eliminating what are called "welfare aspects" of Social Security, such as a variety of special dependents' benefits, the minimum benefit, the student benefit and aspects of disability eligibility that are based on age and skills as well as physical impairment for work.

Stockman and Schweiker have repeatedly said that to fill some of the protective gaps left by cuts they propose, there is a welfare system and there is no reason why people should be getting Social Security benefits of some types as a matter of right when protection for them exists on a need-tested basis in the welfare world.

The Reagan package, in short, seems to be fashioned in part on the basis of a world view that sees the system as having grown too large, and as attempting to do too much, and therefore as costing too much. Administration talk of Social Security's role in the "safety net" seems to emphasize the retirement benefits received by a worker as the primary benefit in the system and regard much else as merely "fringe benefits."

Both Schweiker and Stockman have expressed the view that one of the problems of Social Security is that too many fringe benefits have been loaded onto it in recent years in the laudable, but ultimately unmanageable, hope of providing virtually everyone with true economic security of a sort.

They argue that the student benefit is one example; another, the minimum benefit which goes in some cases to well pensioned civil servants who get plenty from federal civil service pensions and worked in Social Security-covered employment only a few years. They say disability benefits should go only to those with the most severe physical ailments; others can go on the charity disability welfare program entailing a needs and income test.

They say the basic level of benefits under current formulas are a little too rich. They say people who want to retire at 62 and enjoy leisure while others are laboring until 65 must pay the financial penalty.

Only by cutting back these "fringe" benefits will it be possible to guarantee financing for what must remain the primary function of the system, they argue: a basic pension for retirees.

Critics of the administration proposals have counter-arguments on most of these contentions: Ball, for example, has said that a recent study shows that 57 percent of those who retire at 62 actually do so because they are in ill health, and another 14 percent because they are out of work and can't find jobs.

This being so, they argue, a proposal that would cut back early retirement monthly benefit levels as much as two-fifths from present law and leave a benefit equivalent to only 20 percent of what the individual earned before retirement is not merely an adjustment but a tremendous rip in the safety net.

Others argue that two-thirds of those receiving student benefits are of relatively low income and may have to discontinue education if student benefits are killed at the same time that guaranteed and direct college loans are being cut back as part of Reagan's proposed cuts in education programs.

There are already considerable signs that members of Congress believe the Reagan plan overreached and asked for too much. The Senate, on a 96-to-0 vote, signaled a few days after the Reagan plan was announced that it would not accept it and Reagan had to offer a promise to compromise to help calm things down. Undoubtedly, Reagan's proposals have left a residue of suspicion and enmity among affected groups and in general among opponents of social program cuts.

But in the long run, the political damage may not be too great. There is generally a perception that something must be done, that it may require either higher tax burdens or some surgery (if much less than he asked), and that some bipartisanship is needed to fashion a solution. If he can reach a genuine compromise with Congress, everybody may be so happy the problem is solved that he may get off relatively lightly.

THE LEGACY OF THE HOLOCAUST PASSED ON

Mr. PROXMIRE. Mr. President, the first worldwide gathering of victims of the holocaust ended June 18 as 5,000 survivors of Hitler's death camps transmitted a legacy of the holocaust to their children. The New York Times reported on June 19 that the survivors united at Jerusalem's Wailing Wall to remember the horror which killed 6 million Jews. In the face of what many survivors see as revisionism and growing antisemitism, they passed on a legacy to keep the memory of the Holocaust alive in succeeding generations.

The legacy was read aloud to the gathered survivors. It began:

> We take this oath! We take it in the shadow of flames whose tongues scar the soul of our people. We vow in the name of dead parents and children. We vow, with our sadness hidden, our faith renewed. We vow, we shall never let the sacred memory of our perished six million be scorned or erased.

The purpose of this testament is not simply to mourn for the nightmare of the past. It warns that man is still capable of inhumanity, and courageously condemns such actions. Their legacy looks to the past to remind us that the future may hold new horrors.

The survivors of the most horrible genocide campaign the world has witnessed have united to tell us to learn from the holocaust. They unite to tell us that the world can be better if we will make it so.

Mr. President, I ask my colleagues what our legacy to future generations will be. Are we to leave to our children a heritage of indifference and irresponsibility? If genocide is committed in the future, are our children to have a crippled stance in stopping it? The answer must be a resounding no.

The holocaust survivors have passed to their children the responsibility to remember the past and protect the future. I ask that this Senate consider its responsibility to help end the crime of genocide. I urge swift adoption of the Genocide Convention.

Mr. President, I thank my good friend, the Democratic leader, and yield the floor.

Mr. ROBERT C. BYRD. Mr. President, I yield my time to any Senator who wishes to have the time.

Mr. President, I yield back the remainder of my time under the special order.

ROUTINE MORNING BUSINESS

The PRESIDING OFFICER (Mr. SYMMS). Under the previous order, there will now be a period for the transaction of routine morning business for not to extend beyond 30 minutes with statements therein limited to 5 minutes each.

THE UTILITY OF THE SOLAR ELECTRONIC PROPULSION SYSTEM

Mr. HEFLIN. Mr. President, on Sunday, June 7, 1981, an article entitled "What Earthly Purpose to Peeking at Planets?" by Edward P. Stafford, a former Special Assistant for External Affairs at NASA, and a naval aviator for 25 years, was published in the Washington Star. This article is one of the most cogent arguments I have read in quite some time explaining why it is important for us to continue our study of our solar system and highlights some of the lessons that we hope to learn from this endeavor. As Mr. Stafford states—

> The ways in which new knowledge from the planets will combine to create new benefits to humanity and what those benefits will be are as unknowable as the future. The only certainty is that they will come.

I ask unanimous consent that the entire text of this article appear at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HEFLIN. The Solar System Exploration Committee at NASA is currently pondering this Nation's planetary exploration program. I have given the committee the benefit of my views on this subject and I would like to take just a minute to share with the rest of the Members of this body my thoughts along these lines. I was particularly grateful to be given the opportunity to give my views in writing to the Solar System Exploration Committee since, as I understand it, the charter of that Committee is to develop and recommend to NASA a plan for solar system explorations for the remainder of the century.

Mr. President, we have all witnessed the spectacular discoveries of the *Voyager* spacecraft as they flew by Jupiter and Saturn. My pride in what this country has been able to accomplish in planetary exploration was at its peak with the recent pictures from Saturn. This Nation has been at the forefront of planetary exploration and I hope the Congress will view its responsibility as

one that will result in a continued U.S. preeminence in this area.

Obviously, Mr. President, I am not a planetologist and cannot provide scientific rationale or my views on planetary explorations. However, I have been exposed to numerous eloquent testimonies before the Senate Science, Technology, and Space Subcommittee and I have talked to quite a number of experts in this field and I do have an opinion. This Nation has undertaken a vigorous planetary program to date and I feel that we are capable of becoming the first nation on Earth to develop a comprehensive understanding of the solar system. This understanding has already permitted increased knowledge not only of the other planets, but also of our Earth. There are many benefits for mankind that will be derived from a comprehensive knowledge of our neighbors and the way the solar system has evolved. We have also benefited from the technological advances that were made to enable our spacecraft to make the significant discoveries and transmit them back to Earth over billions of miles. As I have studied our planetary exploration program, I have come to the conclusion that—faced with a hiatus of 7 years from the last launch to the next planetary launch—our position of international leadership, scientific and technological benefits, and public pride is now in serious jeopardy. The American team of planetary scientists and engineers is in real danger of dissipating. The Soviet Union and France are embarking on joint ventures to Venus and Haley's Comet, and Europe and Japan are developing deep space probes and a significant space science capability. I have an increasing concern that just as we are beginning cooperative ventures with others in the world, our dedication to planetary exploration begins to falter.

The current administration's plan provides that Galileo, ISPM, and VOIR will provide a return to deep space but not until 1985. Galileo and ISPM, initiated in fiscal year 1978 and 1979 have been delayed from their original launch dates by 3 years. These delays have pointed up the fact that our space transportation system capabilities, both schedule and performance, were not attained when needed.

As a result of this, NASA now recommend replacing the shuttle upper stage to meet the higher requirements associated with the new launch dates. I do not want to belabor the well known history of these two projects, but there is a very good lesson we should have learned: We counted on schedule and launch vehicle performance of new and complex systems. The conditions changed—spacecraft weight grew, launch vehicle performance was low and delays in launch opportunities resulted. We in the Congress must keep this lesson firing in our minds as we try to find a proper balance between capabilities, flexibility, and requirements.

I would now like to borrow a portion from a recent statement of Dr. Al Cameron, chairman of the Space Science Board to the House Subcommittee on Space Science and Applications. In that testimony, Dr. Cameron stated that the major bodies of the solar system divide naturally into three distinct classes: The large, low-density outer planets; the smaller, high-density inner planets; and the primitive bodies—comets and asteroids. A comprehensive study of our solar system should be based upon a strategy of exploration of all three classes. To date, our program has focused quite naturally on our neighboring planets—the inner planets and recently the outer planets. Galileo will add significantly to our knowledge of one of the outer planets—Jupiter. While, as Mr. Stafford also points out in his article, we have not yet completed our studies of the inner planets and have just begun to study the outer planets, we should now begin to focus attention on the third element of Dr. Cameron's triad—the primitive bodies.

I am certainly not advocating this focus be to the exclusion of continued studies of the inner and outer planets. I do believe, however, that we are at a decisive point in our planning for the future because of the recent decision by the Congress to continue the funding for the solar electric propulsion system (SEPS), despite a recommendation by the administration that it be canceled. According to the testimony I have heard, I conclude that without SEPS there is no capability to undertake serious studies of the "primitive bodies"—comets and asteroids, and very little, if any, capability to continue studies of the outer planets beyond Galileo. It is for this reason that I feel the Congress wisely chose to continue funding and defer rather than cancel SEPS. Deferring SEPS provides us the opportunity to maintain this option for a period of time, but the restoration of full development status may depend upon the signals the Congress sends about the direction NASA should take in the latter part of the eighties' and early nineties'. I personally believe that an aggressive plan to utilize SEPS for exploration of comets, asteroids and outer planets should be seriously considered by NASA, and I so informed the Solar System Exploration Committee.

As I understand the background, SEPS technology has been in development for over 20 years, yet if this technology is permitted to be terminated due to, as the administration puts it, lack of an approved mission—we will have been shortsighted indeed Mr. President, I would just like to quote from a letter from Prof. Eugene H. Levy from the University of Arizona where he serves in the Department of Planetary Sciences, Lunar, and Planetary Laboratory to Congressman BOLAND dated May 27, 1981. Professor Levy states—

Clearly, development of solar electric propulsion is inevitable; the United States will need it in the relatively near future. It is not rational to wait until the first mission for which it will be needed is also started. Recent experience has shown us that such a policy is not wise and can lead to unconstrained cost growth as a result of unforeseen delays in propulsion development.

Mr. President, I ask unanimous consent that the entire text of Professor Levy's letter also be printed at the conclusion of my remarks. I think that Professor Levy makes the case very forcefully and I certainly want to associate myself with his position.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. HEFLIN. In my judgment, the people of this country will not easily understand why NASA, despite all its capabilities and foresight, has permitted this Nation to be a sideline viewer for the upcoming return of Haley's Comet. We have all but missed this opportunity, but will we have a logical plan that will translate to the public that we are moving forward with an aggressive exploration plan for other comets, the asteroids, and outer planets? I am convinced that we should aim high, for if we do not do it now, our ability to achieve future goals may be beyond our reach. We must go forward to reclaim the momentum in planetary exploration for our scientists, engineers, and the Nation.

As a final word, Mr. President, I think that Members of this body at large, not just members of our Space Subcommittee should help shape the future course of solar system exploration by urging NASA to adopt a plan that results in this Nation having the capability to complete Dr. Cameron's triad. The next initiative, it seems to me, should be to explore the primative bodies—comets and asteroids. Such a plan is required now to let our planetary scientists and engineers, and the general public know that we intend to excel.

EXHIBIT 1

[From the Washington Star, June 7, 1981]

WHAT EARTHLY PURPOSE TO PEEKING AT PLANETS?

This month another spacecraft focuses its electronic eyes on Saturn and begins to beam its images back to Earth.

This Voyager—the second—is still some 60 million miles from the ringed planet but it is closing fast. Very fast. About 50,000 miles an hour. And it will speed up as the big planet's gravity continues to pull it in. By early August Saturn will loom so large to Voyager's narrow-angle camera that it can be no longer be captured in a single frame.

At 11:24 p.m. EDT on August 25, the spacecraft will flash past the outer rings at a distance of 23,600 miles with all its sensors busy gathering as much data as they can. On its way out of the Saturn system Voyager will observe six of the planet's 15 known moons.

During the final days of August and the first week in September a lot of dramatic pictures of Saturn will appear on newsstands and TV screens, and the accompanying captions and stories will be widely read. There will be considerable interest accompanied by a certain amount of pride in what we have been able to accomplish, which is to send an extension of our own intelligence with great precision hundreds of millions of miles out into space to make highly accurate scientific observations.

But by mid-September, except for a relatively few scientists, Voyages II's encounter with Saturn will have faded from public attention, remembered, if at all, as an interesting, isolated space spectacular.

But that memory will be wrong. Interesting, yes. Spectacular, in its own way. But certainly not isolated. Because although it is not generally recognized, the rendezvous of Saturn and Voyager is just one incident in a carefully planned, progressive, systematic

exploration of the solar system, aimed, in the long run, at improving the human lot on planet Earth.

Voyager II is only the present link in a chain of planetary explorations which extends 22 years into the past and unless it is severed by the budget axe, far out into the future. Voyager II itself was part of that past and will be part of that future, budget axe or no budget axe. It sailed through the mini-solar system of Jupiter in the summer of '79, and with luck in the winter of '86 it will give us our first close look at remote Uranus, twice as far from the sun as Saturn, a frigid, greenish gas-ball spinning around the sun on its side.

With still more luck, it could even reconnoiter yet more distant Neptune, the eighth planet from the sun, in the fall of '89. Luck in the case of Voyager means the continued functioning of its generators, its computers, its instruments and its radio.

Voyager II is very much part of a plan. Its mission from the beginning was to follow its traveling companion, Voyager I, through the systems of Jupiter and Saturn, picking up scientific data the first spacecraft missed and taking another look at objects or happenings of special interest, and then to head out for Uranus and Neptune. The mission of Voyager I was to learn as much as possible about Jupiter, Saturn, and their moons, period.

But both Voyagers fit into a master plan conceived back in 1965 which calls for exploring the planets in three stages: reconnaissance, or a first quick look to see what the planet is really like; exploration—closer, larger study, usually by orbiting spacecraft; and intensive study—getting the answers to specific and important questions about the planet—what is it made of, how is it changing and why, what kind of an atmosphere does it have, does it have a magnetic field as Earth does, and the most interesting question of all, does any form of life exist there?

The two Voyagers come under the heading of exploration. A couple of Pioneers with much less capable instruments did the reconnaissance of Jupiter and Saturn back in the middle '70s.

But when Voyager II arrives at Uranus, and later at Neptune, it will definitely be a reconnaissance, the first man-made device ever to approach those distant, icy worlds. And when (and if) Voyager II focuses its sensors on Neptune and what they "see" is transmitted back to Earth (it will take five and a half hours to get here at light's speed of 186,000 miles a second) we will have completed reconnaissance of eight of the Sun's nine planets; only the frozen rock of Pluto, far out on the fringe of the solar system, will remain unvisited.

Already we are in the exploration stage at Venus, as well as at Jupiter and Saturn, having probed its caustic atmosphere at four locations and mapped its permanently invisible surface from a radar orbiter.

At Mars we have advanced to intensive study with the Viking-lander laboratories and their orbiting partners.

Sometime in 1985 the Space Shuttle will launch another exploratory mission to Jupiter, not a flyby like the Voyagers, but an orbiter which will stay and observe for some 20 months, and a probe to enter and sample the giant planet's swirling atmosphere.

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A better radar will go to Venus to map its surface in more detail. There is talk of a follow-up flight to Mars which would return a sample of its enigmatic soil for analysis here on Earth. Scientists expect that by around 1990 materials and instruments will have been developed which will enable us to land sensors on the 900-degree surface of Venus and the 600-degree rocks of Mercury.

In the early '90's the planets will be lined up in a way that will give us a chance for a first look at Pluto and a second (or first) inspection of Neptune.

CONTINUING ADVENTURE

It is an exciting and continuing scientific adventure, perhaps the greatest ever. We have discovered sulfuric acid clouds, crushing pressures and hellish temperatures on Venus, long thought to be our sister planet and imagined by many to be populated with exotic, intelligent beings. We have found no canals but dried-up water courses on the rusty surface of Mars, and mountains and canyons which dwarf anything on Earth. We have analyzed the red planet's soil with landed laboratories and found more questions than answers.

We have witnessed sulfur-belching volcanic eruptions on Jupiter's moon Io, the only active volcanoes in the solar system other than those on Earth. We have seen lightning flashing through the banded ammonia clouds of Jupiter, observed "braided" rings at Saturn which seem to defy the known laws of orbital mechanics, repeatedly penetrated with impunity the belt of asteroids between Mars and Jupiter, dispatched four spacecraft (the Pioneers and the Voyagers) on eternal journeys among the stars—the first man-made objects to leave the solar system.

Interesting. Exciting. Even fascinating to many of us. But expensive. And how does all this improve the human lot on Earth? "What's in it for me?"

More than you think.

For starters, planetary exploration can teach us to preserve our beautiful and varied planet as the only home for mankind in all the universe. Venus is about the same size and age as Earth and only a little closer to the sun, yet a man stepping out of a spacecraft on Venus would be simultaneously crushed by pressures about the same as those 3,000 feet down in the sea, and fried by temperatures above the melting points of lead and zinc.

What happened? Apparently there was a buildup of carbon dioxide in the atmosphere which trapped the heat from the sun—the so-called "green-house" effect. We are putting a lot of carbon dioxide into our own atmosphere by burning coal and oil. Can the same thing happen here? Knowledge of what happened on Venus can show us how to prevent it.

LIFELESS, RUSTY DESERT

Mars is smaller but otherwise much like Earth and only a little farther from the sun. Apparently it once had an atmosphere perhaps as dense as ours, and surface water like that in which life on Earth began. Now the Martian atmosphere is thin and tenuous and the surface water is gone. Mars is an apparently lifeless, rusty desert. What happened? Can it happen here? Studies of Mars can answer both questions and perhaps prevent disaster.

Observation of the evolution, geology and movement of the crusts of other planets and their moons can give us a better understanding of those same elements on Earth—and thus a better ability, among other things, to predict earthquakes and to pin-point likely locations of oil, coal and mineral deposits.

Studies of cloud movements and weather patterns on other planets are giving us new insights into how the weather works at home—new insights mean more accurate, longer-range forecasts with perhaps an eventual ability to control some aspects of our weather.

In the long run it may well be that access to the rest of our solar system will mean access to a new and literally limitless supply of materials and energy at just about the same time our own planet is running out.

But in the end the exploration of the solar system, by Voyager II, its predecessors and successors, will improve the human lot in precisely the way it has always been improved, by the simple enlargement of human knowledge. The ways in which new knowledge from the planets will be combined to create new benefits to humanity, and what those benefits will be, are as unknowable as the future. The only centainty is that they will come.

That is the real meaning of the endless odyssey of Voyager II as it accelerates towards Saturn this summer.

EXHIBIT 2

THE UNIVERSITY OF ARIZONA,
Tucson, Ariz., May 27, 1981.

Hon. EDWARD P. BOLAND,
House of Representatives,
Washington, D.C.

DEAR MR. BOLAND: I understand that your Committee will shortly undertake to review the desirability of including funds for continued development of the Solar Electric Propulsion System in the current NASA appropriations bill. I would like to submit my views for your consideration in this matter. While I am writing as an individual I am, at the same time, drawing heavily on conclusions and recommendations of the Committee on Planetary and Lunar Exploration of the Space Science Board and on deliberations of the NASA Solar-System Exploration Committee.

It is essential that the planning and development of launch and propulsion capabilities be carried out with a view to the long-term requirements and objectives of our continuing space activities in all areas of national importance. The low-thrust, solar electric propulsion system will provide a unique operational capability, complementary to the shuttle and upper stage combination and will, together with them, give the United States access to a large part of the solar system for scientific and technological endeavors.

While I have no doubt that such low thrust propulsion systems eventually will find important use also in Earth orbital applications, for maneuvering large space structures that will not have the mechanical rigidity to withstand the stress of acceleration by conventional rockets, here I want to concentrate on the need for this propulsion capability to realize the United States' objectives in space science.

The United States presently occupies a leading, but rapidly eroding, position in space science. This erosion of our position is the result of shrinking national foresight through several recent administrations. If we are to arrest this erosion and recover, then we must plan in a sensible way for future needs. Several major steps in capability are offered by low thrust propulsion systems; these include: substantial increases in spacecraft capacity, freedom from many launch window constraints that are common with conventional ballistic vehicles, and the ability to reach important but otherwise inaccessible objects. The capabilities of solar electric propulsion would facilitate, in a major way, our ability to carry our investigations of comets, asteroids, Mercury, Saturn, and Mars.

It is not now clear to me what level of vigor we will be able to look forward to in U.S. scientific programs over the next ten or twenty years, but it is clear what many of the major questions are. For example, we have made great progress in understanding the nature of our solar system and we expect that large and unique steps toward understanding its origin can be taken by detailed study of comets and asteroids—the best preserved known remnants of the original stuff from which we are made. Any reasonable national science policy will meet the challenge posed to us by these primitive bodies; a low-thrust propulsion system, such as SEP, is essential to that endeavor.

Clearly, development of solar electric propulsion is inevitable; the United States will need it in the relatively near future. It

is not rational to wait until the first mission for which it will be needed is also started. Recent experience has shown us that such a policy is not wise and can lead to unconstrained cost growth as a result of unforeseen delays in propulsion development. I believe that you yourself were early in pointing out such a possible danger to the Galileo mission during the development of the space shuttle. We should learn from our past experiences. When problems arise in development of new technologies they can be signals, of shortcomings in the way we do things; but they also are signals that we are undertaking technical challenges that are worthy of our abilities and that will provoke those abilities to growth. We have seen that happen many times in our space programs. However, it is important that we proceed in a way that rationally minimizes the extended influences of unforeseen problems. Beginning development of solar electric propulsion now would be the right step.

Sincerely,

EUGENE H. LEVY,
Associate Professor.

WASTE, FRAUD, AND ABUSE REDUCTION ACT

Mr. HEFLIN. Mr. President, I rise today to speak in favor of a bill that I believe is long overdue, the Waste, Fraud, and Abuse Reduction Act of 1981. I strongly commend my colleague from Wisconsin, Senator KASTEN, for his leadership in this important area and I am pleased to be a cosponsor of this legislation.

Waste, fraud, and abuse within the Federal Government costs the American taxpayers untold billions of dollars each year—this is not money that goes to feeding the poor or to defending our Nation—this fraud and waste represents billions of dollars that is simply lost as far as the public good is concerned. This type of irresponsibility and corruption cannot be allowed to continue.

The Waste, Fraud, and Abuse Reduction Act is a simple, sensible, and systematic way to put waste and fraud in check. Further, this bill will encourage—not discourage—senior Government personnel to report waste and abuse when they see it.

Under the terms of the bill, the Congress would withhold a certain percentage of each Federal agency's funds at the beginning of each fiscal year. Each agency would then have 4 months to report to the Congress on their antiwaste, antifraud, and antiabuse efforts. Following a careful review of these efforts, Congress could lift the "hold" on the funds or return these funds to the Treasury if the antiwaste efforts were insufficient.

Senator KASTEN likes to call this his 2-percent solution because the percentage withheld at the beginning of each year would be 2 percent. While I enthusiastically support the concept involved here, I cannot help but wonder if the percentage could be raised. This is a matter that I will explore for later discussion on this legislation.

The Senate Budget Committee has estimated that this bill could save American taxpayers as much as $7 billion in fiscal years 1983 and 1984. I believe these savings could be achieved even sooner and be even more substantial if action were taken on this important legislation quickly.

Some Members of this body may be concerned that this legislation would infringe upon the normal appropriations process, thus interfere with the Congress constitutional duty to appropriate moneys. I do not share those concerns because the bill is carefully designed not to infringe upon this responsibility.

The Waste, Fraud, and Abuse Reduction Act does not single out any one agency, but would apply to all Federal agencies in an equal manner. Each agency would have to prove that it is doing its best to fight waste and fraud.

Mr. President, the American people are fed up with paying high taxes and then seeing their hard-earned tax dollars wasted by a big and uncaring, wasteful Government. We must take action to see that waste within the Federal Government is stopped. I believe this legislation will do much to accomplish this goal.

NOTICE OF INTENTION TO SCHEDULE CERTAIN MEASURES

Mr. BAKER. Mr. President, as we did last week, I wish to call attention to certain items that might be dealt with by unanimous consent or under brief time agreements if available so that Members may be aware of these measures and the possibility that we will take action on them.

I have not yet had an opportunity to confer with the minority leader on this subject, but I shall do so shortly. I urge all Senators to assume that the five calendar items I am about to list are likely to be disposed of very promptly:

Calendar Order No. 37, S. 271, the Communications Act, from the Commerce Committee; Calendar Order No. 103, S. 816, the so-called Pfizer bill, from the Judiciary Committee; Calendar Order No. 167, Senate Resolution 87, a sense of the Senate resolution in respect to social security, from the Finance Committee; Calendar Order No. 174, Senate Resolution 144, a resolution regarding Lebanon, from the Foreign Relations Committee; and Calendar Order No. 176, Senate Resolution 141, a sense of the Senate resolution, from the Judiciary Committee dealing with crime.

Mr. President, I do not propose to deal with these matters now, but Senators should be on notice that the leadership may attempt to move these bills either by unanimous consent or on short time limitations in the immediate future.

AUTHORIZING APPEARANCE AS AMICUS CURIAE BY THE SELECT COMMITTEE ON ETHICS

Mr. BAKER. Mr. President, I sent to the desk a resolution. This has been cleared on the minority side for immediate consideration. I ask unanimous consent for its immediate consideration.

THE PRESIDING OFFICER. The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 157) to authorize appearance as amicus curiae by the Select Committee on Ethics.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its immediate consideration.

The Senate proceeded to consider the resolution.

The resolution (S. Res. 157) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 157

Whereas, Article I, Section 5, Clause 2 of the Constitution empowers the Senate to consider allegations of misconduct by its members, and the Senate has authorized and obligated the Select Committee on Ethics to investigate such allegations;

Whereas, the Committee is conducting a preliminary inquiry into the conduct of Senator Howard W. Cannon in connection with the sale of a parcel of land owned by the Teamsters Union Central States Southeast and Southwest Areas Pension Fund;

Whereas, for this inquiry the Committee subpoenaed the Department of Justice to produce, in executive session, electronic surveillance recordings obtained by the Department;

Whereas, the Department of Justice agreed to provide the recordings, under an arrangement with the Committee that the contents of the recordings will not be disclosed publicly at this stage of the Committee's proceedings, and will not be disclosed at any later stage without due notice to the Department;

Whereas, the defendants in *United States* v. *Allen M. Dorfman, et al.*, No. 81 Cr. 269, pending in the United States District Court for the Northern District of Illinois, have moved the court for an order which would, in effect, direct the Department of Justice not to comply with the Committee's subpoena;

Whereas, pursuant to sections 703(c), 706(a), and 713(a) of the Ethics in Government Act of 1978 (2 U.S.C. §§288b(c)), 288e(a), and 2881(a) (Supp. III (1979)), the Senate may direct its Counsel to appear as amicus curiae in the name of a committee of the Senate in any legal action in which the powers and responsibilities of Congress under the Constitution are placed in issue: Now, therefore, be it

Resolved, That the Senate Legal Counsel is directed to appear as amicus curiae, in the name of the Select Committee on Ethics of the United States Senate, in *United States* v. *Allen M. Dorfman, et al.*, for the purpose of presenting the right of the Committee to obtain, by its lawful process, evidence it deems necessary for its proceedings.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PROXMIRE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

WHY CONGRESS BARRED BRIBERY ABROAD

Mr. PROXMIRE. Mr. President, on June 18, 1981, the New York Times published an article by Karin M. Lissakers, a senior associate at the Carnegie Endowment for International Peace, titled "Again, Why Congress Barred Bribery Abroad."

Ms. Lissakers' article is well worth reading because it reminds us of the

strong foreign-policy reasons why bribery overseas is such a disaster and why the Senate should oppose S. 708—which is now pending in the Senate Committee on Banking, Housing, and Urban Affairs—proposed legislation to amend the Foreign Corrupt Practices Act, which, in my judgment, would effectively gut, destroy, our prohibitions against bribery abroad.

I ask unanimous consent that Ms. Lissakers' article be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

AGAIN, WHY CONGRESS BARRED BRIBERY ABROAD

(By Karin M. Lissakers)

Judging from the debate over proposals to water down the Foreign Corrupt Practices Act of 1977, the Congress has forgotten just why it forbade the bribery of foreign government officials by United States corporations and required internal accounting controls adequate to ensure that such illegal payments would not be made.

A bill offered by Senator John H. Chafee, Republican of Rhode Island, would narrow the accounting requirements and limit corporate liability. The Administration has recommended eliminating the accounting requirements and easing the definition of bribery. Testifying Tuesday before the Senate Banking Committee, John S.R. Shad, chairman of the Securities and Exchange Commission, took middle ground.

Passage of the law was not, as critics now charge, a misguided desire to impose American standards of ethics and morality on other countries. Nor did Congress assume that the prohibition on bribery would be cost-free in terms of lost business opportunities. Rather, Congress acted because it had become convinced, after an exhaustive investigation and a year-long series of hearings by a Senate Foreign Relations subcommittee chaired by Frank Church that the damage to the United States' foreign-policy interests from permitting these corrupt practices to continue far outweighed any short-term gains in exports and overseas-investment opportunities.

Senate hearings in 1975–76 revealed, among other things, that the Lockheed Corporation had paid more than $106 million in secret "commissions" to promote its foreign sales, including $7 million to a well-connected Japanese "agent" who was also the head of a fanatic right-wing youth movement. Lockheed also made large secret payments to Prince Bernhard of the Netherlands to influence his recommendations as inspector general of the armed forces concerning fighter-plane purchases by the Dutch Government. Exxon funneled more than $50 million to Italian political parties and Cabinet members to buy favorable tax and energy legislation. The Northrop Corporation had agreed to pay, to a mysterious Swiss company, 1.5 percent of all its overseas earnings for the sale of the F–5 but testified that it did not know who the company's shareholders were, or what services the fee would entail.

The act was not directed at "baksheesh" given to minor functionaries but at the wholesale buying, by American companies, of cabinet ministers, chiefs of armed forces, and legislators in Europe, in Asia, in the Middle East, and in Latin America, which was revealed in those hearings. Mr. Church summed up the act's foreign policy rationale this way: "While bribes and kickbacks may bolster sales in the short run, the open participation of American firms in such practices can in the long run only serve to discredit them *and* the United States. Ultimately, they create the conditions which bring to power political forces that are not friends of ours, whether a Qaddafi in Libya or Communists in Italy." (Or, it could now be added, a Khomeini, in Iran.) Mr. Church also noted: "Morality in the business community is not our responsibility, nor is enforcing the law in other lands. What this Government and this Congress must concern itself with are the very real and serious political and economic consequences that spreading corruption can leave for U.S. interests both at home and abroad."

Before the Congress decides to gut the law, it should ask itself whether it serves our security interests to have North Atlantic Treaty Organization allies and other friendly governments base their arms-procurement decisions on the size of bribes offered by various arms manufacturers rather than on defense needs; whether democratic forces are strengthened when American corporations participate in the subversion of the legislative and electoral processes of other countries by pumping hidden millions of dollars into the Swiss bank accounts of officials and the coffers of political parties and parliamentary groups; whether our efforts to promote economic development in third-world countries are helped when these countries pay an extra 10 or 20 or 50 percent for needed imports because kickbacks are part of the deal; and whether American business is well-served when hidden bank accounts, dummy corporations, and false filings are considered a normal part of doing business and when honest corporations are left without legal protection against shakedowns and extortion by corrupt foreign officials.

There is pending in the United Nations a draft treaty on corrupt practices that would protect the competitive position of American business abroad without sacrificing our broader foreign-policy interests. The Administration's energies would be better directed at seeking adoption of an international agreement in the United Nations or in the Organization for Economic Cooperation and Development to parallel our own tough and apparently effective anticorruption law.

ORDER OF PROCEDURE

Mr. PROXMIRE. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I say, "Good morning" to the Chair, and I thank the Chair for recognizing me.

I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CRIPPLING EFFECTS OF HIGH INTEREST RATES

Mr. BOREN. Mr. President, again today I want to take the floor as I have for the last 4 days to call the attention of my colleagues to the crippling effects that high interest rates are having on the key productive sectors of our economy.

As you know, I intend to address this crucial problem each day on the floor of the Senate until the administration and responsible policymakers devise a program to combat these outrageous interest rates which are continuing to strangle the productivity of our Nation.

Mr. President, we simply cannot delay action on this matter any longer. We do not have to look very hard to find examples of the effects interest rates are causing. The industry of agriculture in America, one of the most productive and vital segments of our economy, is likewise feeling the tremendous burden of high interest rates.

Total interest costs in agriculture have doubled in the last 4 years to reach an all time high of $14 billion. The interest costs on a $45,000 PCA loan at 15 percent amounts to $6,750 per year. Cattle feeders are paying $35 a head per year just in interest charges on the money borrowed to pay for the steers. Interest charges on a $400 heifer calf brought today would be $160 for 2 years. The charge, then, for 100 replacement heifers would be $16,000. Assuming the heifers produce 90 calves for sale in the fall of 1983, the interest cost per calf to the farmer would be $178. The figure does not even include the interest he pays as a percentage of other production costs such as fertilizer, equipment, and feed, which has gone up 27 percent in the last year alone.

Mr. President, interest rates are forcing 25,000 fulltime farmers out of work a year. The word farmer in America used to mean a person who worked all day on his own farm to make a living for his family. For another 75,000 farmers each year, farming is becoming their secondary source of income. How long can our farmers continue to produce for us under these disastrous conditions?

Again, I urge the President, the Secretary of the Treasury, those in the Federal Reserve, and the economic advisers of the administration to take note of this national emergency and to resolve the crisis while we still have farmers who are willing to produce.

I yield the floor.

PUBLIC OPINION ON THE FEDERAL JUDICIARY

Mr. THURMOND. Mr. President, the Heritage Foundation recently commissioned a public opinion study which was performed by Sindlinger and Company, Inc. The study assessed public attitudes toward the Federal judiciary and public opinion of the proper role of the Federal judiciary under the Constitution.

I believe the results of the study are valuable in understanding the extent of decline in public confidence in our Federal court system.

I also believe that the Federal judiciary itself could reflect profitably on public attitude toward the Federal courts. Perhaps through the process of self-examination the Federal courts might see fit to take the lead in returning their activity to the limits of Federal judicial authority specified in the Constitution.

I ask unanimous consent that the results of the study conducted for the Heritage Foundation be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

A STUDY CONDUCTED FOR THE HERITAGE FOUNDATION BY SINDLINGER & CO., INC., MEDIA, PA.

	Total			Male			Female		
	Sample	Percent	Proj. (thousands)	Sample	Percent	Proj. (thousands)	Sample	Percent	Proj. (thousands)
Base—Total adults interviewed	2,713	100.0	165,991	1,322	100.0	80,520	1,391	100.0	85,471
Question 1: In the United States, the appointive method is used for Federal judges—that is, they are appointed for life. This, however, is not so for State judges. The majority of States provide that State judges must be reconfirmed periodically, in some States, by popular election. In your opinion, do you think that Federal judges should be reconfirmed periodically?									
1. Yes	1,999	73.7	122,277	1,027	77.7	62,552	972	69.9	59,725
2. No	441	16.3	26,978	223	16.9	13,582	218	15.7	13,395
3. Don't know	273	10.1	16,736	72	5.4	4,385	201	14.5	12,351
Question 2: Would you, yourself, support the direct election of Federal judges?									
1. Yes	1,853	68.3	113,343	959	72.5	58,410	894	64.3	54,932
2. No	512	18.9	31,328	246	18.6	14,983	266	19.1	16,345
3. Don't know	348	12.8	21,320	117	8.9	7,126	231	16.6	14,194
Question 3: It is almost unheard of for Congress to impeach a Federal judge. In your opinion, do you think that Congress should at least scrutinize the rulings of Federal judges in order to insure that they do not go beyond the bounds of the Constitution?									
1. Yes	2,345	86.4	143,460	1,161	------	------	1,184	85.1	------
2. No	104	3.8	6,364	49	------	------	55	4.0	3,380
3. Don't know	264	9.7	16,161	112	------	------	------	10.8	9,340
Question 4: Would you prefer to have a sensitive issue like busing, abortion, and voluntary prayer decided in State courts or Federal courts?									
1. State courts	1,671	61.6	102,230	829	62.7	50,492	842	60.5	51,737
2. Federal courts	614	22.6	37,560	311	23.5	18,942	303	21.8	18,618
3. Both courts	112	4.1	6,854	52	3.9	3,167	60	4.3	3,687
4. Don't know	316	11.7	19,347	130	9.8	7,918	186	13.4	11,428
Question 5: When the Supreme Court considers a case, would you favor requiring a two-thirds "supermajority" of the Court to declare a State or Federal law unconstitutional?									
1. Yes	2,177	80.2	133,151	1,146	86.7	69,800	1,031	74.1	63,351
2. No	392	14.5	24,022	121	9.2	7,370	271	19.2	16,652
3. Don't know	144	5.3	8,819	55	4.2	3,350	89	6.4	5,469
Question 6: Should we allow Congress to overturn a Supreme Court ruling by a two-thirds majority vote?									
1. Yes	1,482	55.0	91,290	720	54.5	43,854	772	55.5	47,436
2. No	807	29.7	49,366	411	31.1	25,035	396	28.5	24,333
3. Don't know	414	15.3	25,336	191	14.4	11,653	223	16.0	13,302
Question 7: Would you favor elimination of "intervenor funding" whereby Federal agencies pay attorneys to present their views in regulatory hearings?									
1. Yes	1,490	54.9	91,135	779	58.9	47,447	711	51.1	43,688
2. No	567	20.9	34,697	265	20.0	16,141	302	21.7	18,557
3. Don't know	656	24.2	40,159	278	21.0	16,932	378	27.2	23,226
Question 8: Would you favor limiting the authority of Federal regulatory agencies to initiate lawsuits against businesses and citizens?									
1. Yes	1,742	64.2	106,549	909	68.8	55,365	833	59.9	51,184
2. No	392	14.5	24,002	158	12.0	9,623	234	16.8	14,378
3. Don't know	579	21.4	35,440	255	19.3	15,531	324	23.3	19,908
Question 9: Would you favor congressional efforts to withdraw Federal court jurisdiction over cases involving issues such as busing?									
1. Yes	2,206	81.3	134,973	1,072	81.1	65,293	1,134	81.5	69,679
2. No	396	14.6	24,222	205	15.5	12,486	191	13.7	11,736
3. Don't know	111	4.1	6,796	45	3.4	2,741	66	4.7	4,055
Question 10: Do you support the current proposal to abolish the federally funded Legal Services Corporation, a program costing $321,000,000 in the current fiscal year?									
1. Yes	1,407	51.9	86,075	705	53.3	42,940	702	50.5	43,135
2. No	723	26.6	44,226	371	28.1	22,597	352	25.3	21,629
3. Don't know	583	21.5	35,691	246	18.6	14,983	337	24.2	20,707
Question 11: Do you feel the Federal judiciary reflects your personal views?									
1. Yes	281	10.4	17,186	149	11.3	9,075	132	9.5	8,111
2. No	2,096	77.3	128,247	1,010	76.4	61,517	1,086	78.1	66,730
3. Don't know	336	12.4	20,558	163	12.3	9,928	173	12.4	10,630

U.S. INTEREST IN SOUTHEAST ASIA

Mr. THURMOND. Mr. President, It is most appropriate today to draw the attention of the Senate toward Southeast Asia in view of the statement yesterday by Secretary of State Alexander Haig that the United States would "shore up those who are under threat and danger" in that area.

As perhaps the last Member of Congress to visit South Vietnam and Cambodia before their fall to Communist forces, and as one who deplores the mass murders in Cambodia and the enslavement of the people in South Vietnam, I believe more attention is needed by the United States in Southeast Asia.

In keeping with this interest, I wish to draw to the attention of my colleagues an article written by Brig. Gen. J. D. Hittle, a retired Marine officer, entitled "A Continuing Conflict in Southeast Asia."

General Hittle is a former Assistant Secretary of the Navy and holds a master's degree in oriental history. His article is perceptive and worthy of the attention of Members of the Congress.

General Hittle's article appeared in the June 1, 1981, issue of the Navy Times, and I ask unanimous consent that it be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A CONTINUING CONFLICT IN SOUTHEAST ASIA

(By Brig. Gen. J. D. Hittle, USMC (Ret.))

The tragic drama of U.S. surrender in Vietnam may be over, but the end of the continuing conflict in Southeast Asia isn't even in sight.

There are, of course, a lot of local and side issues involved in the continuing turmoil in Southeast Asia, but the basic source of trouble is the continuing and relentless expansionist policies of the Soviet Union.

It is all too clear that our run-out solved nothing. We could, and did get out of war, but the realities of strategy, geography and Russian aggression have made it impossible for the United States to escape from the consequences of our voluntary defeat.

The anti-war zealots and faint hearts urged that Vietnam be left to the Viet-

namese, Laos to the Laotians and Cambodia to the Cambodians. They poo-pooed the possibility of a red reign of terror in Vietnam, a genocidal effort to exterminate the hill people who trusted us in Laos, or a bloodbath in Cambodia. But, as history has so rapidly and lamentably written, all this has come to pass. Wishful dreaming won't change a single blood- or tear-soaked fact.

The inescapable fact that has emerged from our surrender is that, whether we like it or not, we cannot as a nation isolate ourselves from what has happened and what is happening in Southeast Asia. The reason is a simple one: Southeast Asia was, and is, inextricably intertwined with the survival of the United States and our allies.

At the southern end of the peninsula are the Straits of Malacca. This is the narrow-water corridor, the choke point, through which streams the Mideast oil that fuels the fires of Japanese industry. The endless procession of ships through the straits carries, too, much of the other materials from the Persian Gulf/Indian Ocean basin on which Japanese, United States and other free world economies depend.

No wonder the Malacca Straits have been high on the Kremlin's target list for so long! That narrow-water corridor is what so much of the Vietnam war was all about. Vietnam, Cambodia and Laos comprise what was once French Indochina. From Moscow's standpoint, this area was the strategic stepping stone to control in Southeast Asia.

U.S. surrender opened the floodgates to continuation of the Russian advance in Southeast Asia. The result is that the red tide of conquest is now pushing against the borders of Thailand. Thailand, as the result of the U.S. surrender in Vietnam, has been thrust into the front-line role in defense of what remains free in Southeast Asia. In terms of basic strategy, Thailand has a crucial role in free world defense against modern Russian imperialism.

As the result of her geographic position, Thailand is the central barrier that blocks continuation of Russia's expansion through Southeast Asia. Thus, the dark clouds of growing crisis swirl lower over Thailand's long and imperiled Laotian and Cambodian border lands.

The deadly seriousness of Thailand's situation—and that of the United States as well—was sharply underlined by recent reports from Cambodia. Cambodia, according to news stories from Phnom Penh, is no longer solely a Vietnamese operation backed by Moscow. Now that the Vietnamese aggressors have pushed the Pol Pot Red Khmer butchers into the mountains, Russia has openly moved into Cambodia. Press reparts say that "advisers" are there in the hundreds. The Russian embassy there has issued press notices outlining plans for social, economic and agricultural reconstruction. What wasn't highlighted was military rebuilding.

There are also press reports that diplomatic sources in Thailand say Russia began shipping arms by sea to the Cambodian port of Kampong Sam and by air from Vietnam. Phnom Penh has announced that Cambodians have been sent to Russia for pilot training.

What Moscow is now doing in Cambodia follows the familiar pattern of Russian exploitation and development of a new satellite. It means that Moscow is consolidating its position in Cambodia, just as it has been doing in Laos and earlier in Vietnam.

Such consolidation of the Russian position in the nations bordering Thailand offers nothing but growing peril for that nation. The strategic equation is plain and uncomplicated: If Russia pushes further into the Southeast Asian peninsula, Moscow must take or neutralize the Thai barrier.

If the Thai barrier falls, the Russian thrust through Southeast Asia would become two-pronged. One would turn southward toward Malaysia and Singapore and the Straits of Malacca beyond.

But, what so many overlook is Thailand's strategic role in the struggle for control of the vital Persian Gulf/Indian Ocean area. A glance at the map tells why. Thailand stands astride the eastern approaches from the Russian-backed Cambodia-Laos-Vietnam area to Burma.

So, the second prong would branch northwestward against Burma, and Burma, in Moscow's sphere, would give Russia control of the eastern rim of the strategic Bay of Bengal and the land approaches to Bangladesh, the northern border area of India and Pakistan. Such a pattern of Russian expansion would, if successful, mean the outflanking of the Persian Gulf/Indian Ocean area from the East. Just because such a pattern is so large doesn't mean it is empty theory. Russian strategy is global. Nations and continents are but intermediate objectives.

When viewed in this geopolitical context, it can be said with reason that seldom in history has such a crucial strategic role been forced on a nation by others' actions as that which U.S. surrender and Russian persistence have assigned to Thailand.

Like other dramatic developments, this, too, has an ironic twist. In the latter 1800s, England and France were locked in a fierce competition of colonial expansion in Southeast Asia. France was focusing on Laos, Vietnam and Cambodia. England had her sights on exploitation of Singapore, Malaysia, and Burma.

This put the two powers on a collision course. The diplomatic maneuvering was intense and complicated. But, a simple geographic fact was recognized. It was the location of Thailand. That country was in the key position as a buffer between French goals in Indochina and the British objectives in Malaysia and Burma. It was in the British and French interests to have such a buffer. The result was that Thailand was permitted to remain independent, outside of and separating the French and British spheres.

The sad twist of history is that the strategic geography that was so much of the reason for Thailand's independence then, is the source of so much of Thailand's peril today.

But Thailand's critical role in the Russian-United States confrontation is not a mere accident of history. This idea of Russian goals in Southeast Asia and Thailand's strategic role in the U.S.-Russian confrontation is not hindsight.

It has been clearly predicted in these words: "It requires no sage to predict events as strongly foreshadowed . . . It seems to me that the people of America will have brought within their embrace the multitudes of islands of the great Pacific . . . and I think, too, that eastward and southward will her great rival of future aggrandizement (Russia) stretch her power to the coast of China and Siam (Thailand) and thus . . . will meet once more, in strife or friendship, on another field. Will it be friendship? I fear not."

The speaker was Commodore Matthew C. Perry, USN. The place was New York City. The year was 1856.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Saunders, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

ELEVENTH SPECIAL MESSAGE FOR FISCAL YEAR 1981—MESSAGE FROM THE PRESIDENT RECEIVED DURING THE RECESS—PM 60

Under the authority of the order of the Senate of June 19, 1981, the Secretary of the Senate, on June 19, 1981, received the following message from the President of the United States, together with accompanying papers; which, pursuant to the order of January 30, 1975, was referred jointly to the Committee on Appropriations, the Committee on the Budget, the Committee on Agriculture, Nutrition, and Forestry, the Committee on Labor and Human Resources, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Environment and Public Works.

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report 6 new proposals to rescind a total of $321.0 million in budget authority previously provided by the Congress. In addition, I am reporting 13 new deferrals totalling $220.1 million, and revisions to five previously reported deferrals increasing the amount deferred by $78.1 million.

The rescission proposals affect programs in the Departments of Agriculture, Education, Health and Human Services, and Housing and Urban Development as well as the Environmental Protection Agency. The deferrals affect programs in the Departments of Agriculture, Defense, Health and Human Services, Interior, and State as well as the National Foundation on the Arts and Humanities.

The details of each rescission proposal and deferral are contained in the attached reports.

RONALD REAGAN.

THE WHITE HOUSE, *June 19, 1981.*

MESSAGE FROM THE HOUSE

At 11:17 a.m., a message from the House of Representatives delivered by Mr. Gregory, one of its reading clerks, announced that the House has passed the following bill in which requests the concurrence of the Senate:

H.R. 3480. An act to amend the Legal Services Corporation Act to provide authorization of appropriations for additional fiscal years, and for other purposes.

HOUSE BILL REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 3480. A bill to amend the Legal Services Corporation Act to provide authorization of appropriations for additional fiscal years, and for other purposes; to the Committee on Labor and Human Resources.

BILL PLACED ON CALENDAR

The Committee on the Judiciary was discharged from the further consideration of the bill (S. 736) to provide for the control of illegally taken fish and wildlife, and the bill was placed on the calendar.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THURMOND, from the Committee on Armed Services, without amendment:

S. 1408. An original bill to authorize certain construction at military installations for fiscal year 1982, and for other purposes (together with additional views) (Rept. No. 97-141).

S. Res. 159. Original resolution waiving section 402(a) of the Congressional Budget Act of 1974 with respect to the consideration of S. 1408; referred to the Committee on the Budget.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BOREN:

S. 1405. A bill entitled the "Carl Albert Congressional Research and Studies Center Endowment Act"; to the Committee on Labor and Human Resources.

By Mr. LUGAR (for himself, Mr. GARN, Mr. PROXMIRE, and Mr. D'AMATO):

S. 1406. A bill to amend the Depository Institution Deregulation and Monetary Control Act of 1980; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. PRYOR (for himself, Mr. HEINZ and Mr. CHILES):

S. 1407. A bill to amend title 39, United States Code, by strengthening the investigatory and enforcement powers of the Postal Service by authorizing inspection authority and by providing for civil penalties for violations of orders under section 3005 of such title (pertaining to schemes for obtaining money by false representations or lotteries), and for other purposes; to the Committee on Governmental Affairs.

By Mr. THURMOND (from the Committee on Armed Services):

S. 1408. An original bill to authorize certain construction at military installations for fiscal year 1982, and for other purposes; placed on the calendar.

By Mr. HEINZ (for himself, Mr. CHILES, Mr. DOMENICI, Mr. PERCY, Mrs. KASSEBAUM, Mr. COHEN, Mr. GRASSLEY, Mr. DURENBERGER, Mr. DOLE, Mr. DENTON, Mr. D'AMATO, Mrs. HAWKINS, Mr. QUAYLE, Mr. PRESSLER, Mr. COCHRAN, Mr. DANFORTH, Mr. GLENN, Mr. MELCHER, Mr. PRYOR, Mr. BRADLEY, Mr. BURDICK, Mr. DODD, Mr. WILLIAMS, Mr. MOYNIHAN, Mr. BAUCUS, Mr. CRANSTON, Mr. FORD, Mr. DECONCINI, Mr. SASSER, Mr. BENTSEN, Mr. CANNON, Mr. LUGAR, Mr. CHAFEE, Mr. HAYAKAWA, Mr. HATCH, Mr. MATHIAS, Mr. INOUYE, Mr. MCCLURE, Mr. SPECTER, Mr. SYMMS, Mr. WARNER, Mr. KASTEN, Mr. TSONGAS, Mr. SARBANES, Mr. STENNIS, Mr. ZORINSKY, Mr. EAGLETON, and Mr. KENNEDY):

S.J. Res. 92. Joint resolution to authorize and request the President to designate the week of September 6, 1981, as "Older Americans Employment Opportunity Week"; to the Committee on the Judiciary.

By Mr. HAYAKAWA (for himself, Mr. HATCH and Mr. NICKLES):

S.J. Res. 93. Joint resolution to clarify that it is the basic policy of the Government of the United States to rely on the competitive private enterprise system to provide needed goods and services; to the Committee on Governmental Affairs.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BOREN:

S. 1405. A bill entitled the Carl Albert Congressional Research and Studies Center Endowment Act; to the Committee on Labor and Human Resources.

CARL ALBERT CONGRESSIONAL RESEARCH AND STUDIES CENTER ENDOWMENT ACT

● Mr. BOREN. Mr. President, today I am delighted to introduce legislation which will provide support for the newly founded Carl Albert Congressional Research and Studies Center at the University of Oklahoma.

The center was established in 1979 by the Oklahoma State regents for higher education and the board of regents of the University of Oklahoma. This action was taken pursuant to a joint resolution of the Legislature of the State of Oklahoma. The Carl Albert Center is devoted to research, instruction, and to the development of scholarly resources on the U.S. Congress. It performs two related functions: First, the development of the University of Oklahoma Congressional Archive, currently one of the largest in the country, numbering the papers of 25 Representatives and 12 Senators, with commitments from several more; second, the development of academic programs on the graduate and undergraduate levels in congressional studies in cooperation with the department of political science of the University of Oklahoma. In addition, the center sponsors conferences, lectures, and other related academic activities.

While the center focuses its attention on the Congress, it does so in the broadest sense. Incorporated into the mission of the center is the study of the structure, personnel, history, processes, and policies of the Congress. In addition, since the Congress is a legislative institution, study of State and foreign legislative experience is germane to the mission of the center. In the broadest sense, the center seeks to foster in an understanding of the role of representative democracy in the modern world.

As Speaker THOMAS P. O'NEILL, JR., said at a dinner honoring Speaker Albert in Oklahoma City recently, Congress has been called the "Forgotten Branch" of government, often ignored by scholars and the press. "The Presidency has been studied obsessively by academics the world over but little of this interest has spilled over to the Congress," he said.

Students are being graduated from universities throughout this Nation with shallow knowledge about the "people's branch" of government.

I have received letters expressing strong endorsement of this legislation from eminent professors from over the Nation. Dr. Charles O. Jones, Maurice Falk professor of politics at the University of Pittsburgh, commented:

The U.S. Congress remains the model by which legislatures throughout the world are measured. It is essential that units like the Carl Albert Center prosper. The student orientation of the Center itself deserves special notice. Congress has been heavily criticized in recent years—often deservedly so. We need to teach young people the strengths of the institution, thereby encouraging them to enter politics themselves.

Dr. Gilbert C. Fite, Richard B. Russell, professor of American history at the University of Georgia, wrote:

The Carl Albert Center is ideally situated and organized so that the role and importance of Congress can be systematically studied in greater depth. The Center has access to one of the most extensive collections of papers and files of Congressmen and Senators outside of Washington. Funds are needed for a wide variety of specific and useful activities at the Center, all of which will enhance our understanding of Congress and its role in American political and economic life.

Professor Walter Rundell, Jr., of the University of Maryland's department of history, wrote:

Having been a president of the Society of American Archivists, I know how effective it is to have students, both graduate and undergraduate, making regular use of archival collections. Such collections that exist within an academic structure have a high rate of use, thus offering excellent justification for their financing.

Currently, I serve as vice president of the United States Capitol Historical Society, which has cooperated with the Catholic University of America in offering graduate work in Congressional studies. Our program, one of the first in the country, has filled a definite need, but by no means exhausts the possibilities for such academic work. The geographic setting of the Albert Center, with its two-fold purposes, enables it to perform great national services.

This center provides an excellent opportunity to improve the study of Congress. It is fitting that it carries the name of a preeminent scholar of the Congress—the only living former Speaker. Speaker Albert has granted both the people of his State and his country a lifetime of uncommon service and leadership. As Speaker of the U.S. House of Representatives—1 of 47 in history—his light of moral guidance shone with transcending strength during one of the most turbulent periods in our Nation's history. Those of us who had the privilege to

know this rare man, and observe him in action, will never forget, nor fail to appreciate, his unfaltering integrity. At a moment when our Nation cried out in despair, he stepped forward and humbly offered his assistance. His life has been, and continues to be, truly inspirational.

This bill does more than merely acknowledge Speaker Albert's beneficience; it will allow the congressional research and studies center bearing his name to continue to prepare tomorrow's governmental leaders for the great task they are destined to inherit. These young people, and others like them, are hostages to the future we are presently forging. They represent our most solid hope for a better America. If we support the Carl Albert Research Center, we will participate in an active tribute to a most worthy statesman, and will foster in many of our youth an appreciation for tenacity, courage, and ethical idealism in the political profession.●

By Mr. LUGAR (for himself, Mr. GARN, Mr. PROXMIRE, and Mr. D'AMATO):

S. 1406. A bill to amend the Depository Institutions Deregulation and Monetary Control Act of 1980; to the Committee on Banking, Housing, and Urban Affairs.

CREDIT DEREGULATION AND AVAILABILITY ACT OF 1981

● Mr. LUGAR. Mr. President, I introduce today the Credit Deregulation and Availability Act of 1981. I am pleased to be joined by the distinguished chairman of the Senate Banking, Housing, and Urban Affairs Committee, Senator GARN; the distinguished former chairman of the committee, Senator PROXMIRE; and the distinguished Senator from New York, Senator D'AMATO, in this important and timely initiative.

This legislation completes the process begun last year by the Congress in the area of home mortgage interest rate ceilings and business and agricultural credit. Congress saw the distorting and economically damaging impact that State home mortgage interest rate ceilings were having on buyers, sellers, and builders of residential real estate. A similar picture was painted for the business and agricultural credit situation. The Congress must now look beyond these sectors to all remaining areas of our economy. Any purchaser, seller or manufacturer of items dependent on the availability of consumer credit understand the problems now posed by State consumer credit ceilings.

Mr. President, restrictive interest rate ceilings have been discussed in the past as a local problem with certain States receiving substantial attention for their harsh limits and procedural difficulties in modifying them. Such discussions simply are not valid. Restrictive interest rate ceilings are a problem of national scope and importance. Consumers and industries nationwide are being severely damaged by the paucity of credit that has resulted from consumer credit interest rate ceilings.

Industries critical to the economic well-being of Indiana, such as the auto and recreational vehicle manufacturers, are finding their businesses stagnating because of the inability of consumers in other States to obtain financing. These industries, as well as manufacturers of other big-ticket items, are unable to market their products because of the lack of available financing. By the same token, consumers who desire to purchase these items and who are willing to pay higher rates, simply cannot get credit and are thereby deprived of these products.

As a result of the evidence from my own State of Indiana, I sensed that the conditions created by restrictive interest rate ceilings were of nationwide significance. Therefore, in preparation for the recently completed Senate Banking Committee oversight hearings on financial industry issues, I requested the witnesses to comment on usury and the impact of State consumer credit interest rate ceilings. The response to this request confirmed my beliefs. The testimony substantiated the fact that usury ceilings tend to distort financial markets and depress the economy. In addition, I found that there is overwhelming support for us to continue the process begun in the last Congress by completely preempting State usury laws for all credit transactions.

Today, I introduce the "Credit Deregulation and Availability Act of 1981" which accomplishes this objective. This bill completely preempts all State usury ceilings on consumer credit and also eliminates the Federal ceiling that controls the rate of interest that can be charged by Federal credit unions. It continues the precedent set by the Depository Institutions Deregulation Act of 1980 in the area of mortgage credit and thereby frees up the market for all types of consumer credit transactions.

The bill also completes the process begun in the last Congress for business and agricultural credit. While the law enacted last year only went so far as to establish an alternative Federal rate limitation for a 3-year period, this bill completely deregulates the rates that can be charged for business and agricultural credit and lets the free market operate.

I want to stress for the benefit of my colleagues that this bill follows precedent by giving the States 3 years to reject the Federal preemption. Just as in the Deregulations Act of 1980, States are given the prerogative to assert control over the rates that can be charged by institutions within their boundaries and reestablish interest rate ceilings if they so choose. In addition, the legislation very carefully carves out those States that have already rejected last year's Federal preemption and does not reimpose Federal preemption on them.

Finally, I wish to make it very clear that while the bill preempts State consumer credit interest rate laws, it does not interfere with the State's right to establish and regulate consumer protections, licensing requirements, and standards of supervision. These State laws are not preempted by the legislation, and States are free to change these laws or even enact more stringent consumer protection and licensing laws as they deem appropriate.

As I stated earlier, the Senate Banking Committee's oversight hearings firmly convinced me of the seriousness and national nature of the interest rate regulation problem. Just as persuasive were the general economic arguments questioning the efficacy of interest rate ceilings and establishing the fact that such rate regulation is counterproductive in competitive markets. However, probably as telling as anything is the number and diversity of witnesses who favored the abolition of such ceilings.

The administration, through Treasury Secretary Regan, stated that they favor preemption for all loans in the manner prescribed in the Deregulation Act. It is the administration's opinion that "usury ceilings only distort financial markets and credit flows and do not reduce the cost of credit in the economy. Instead, these ceilings simply alter or hide the cost and result in credit being allocated by nonmarket criteria."

The Federal Home Loan Bank Board supports Federal preemption of State interest rate limitations on business, agricultural and consumer credit transactions. They believe that "usury ceilings have a generally depressant effect on the economy of a State where market interest rates exceed the usury ceiling." More importantly, restrictive usury ceilings are preventing savings and loans from taking advantage of their new authority to engage in consumer lending, which is very unfortunate since such short-term loans could help provide the asset-side flexibility important to the viability of the thrift industry.

The National Credit Union Administration and the Comptroller of the Currency also support full preemption legislation. Both have stated that they are concerned about the adverse effects that usury ceilings have upon the availability and allocation of credit, particularly during periods of high interest rates. They recognize that consumers are better served by the removal of usury ceilings, since such ceilings "start a process of credit rationing where the least qualified borrowers find it increasingly difficult to secure credit." Resultantly, both consumers and businesses suffer.

Industry support for Federal preemption of usury ceilings is also very significant. During the oversight hearings, numerous trade associations representing banks, thrifts, credit unions, finance companies, retailers, auto dealers, bank card companies, et cetera, spoke out in opposition to State interest rate regulation and in support of Federal action to eliminate such laws. Their testimony also substantiated the need for rate relief by providing striking evidence as to the detrimental effects that restrictive ceilings are having upon various industries and consumers.

The National Auto Dealers Association estimates that approximately 30 percent of all consumer retail finance contracts are being turned down by financial institutions. In many cases, the inability of a bank to charge the going rate, and not the credit worthiness of an individual, has resulted in a refusal to extend credit. At current interest rates, personal auto loans are unattractive, due to usury law limitations, to banks in 36 States, which account for about 59 percent of all auto

sales. The attrition rate of small business auto dealers is staggering. As of last January, over 2,000 dealers had closed their doors in the prior 16-month period and over 125,000 dealership employees had lost their jobs.

The credit card industry is faring little better. VISA showed a net loss of $335 million in 1980 and because of the high cost of funds is expecting to show a continuing loss during 1981. Retailers are experiencing the same problem due to the high cost of funds. As stated in their testimony:

It is fair to say that the majority of retailers must borrow at interest rates several points in excess of the rates they are permitted to charge on their receivables.

Finance companies are also feeling the effect of these price controls imposed upon the use of money. Small independent finance companies are often dependent upon rediscount companies for funding at rates 4 percent or more above the prime rate. With a prime hovering around 19 percent, the cost of funds for these companies can be 23 percent or more. It is impossible to make ends meet, let alone make a profit, in those States that limit the interest on consumer loans to 18 or 19 percent.

These are just a few of the examples of the effect of usury ceilings on the availability of consumer credit and their impact upon consumers and businesses. The Senate Banking Committee intends to gather more evidence on the scope and nature of this problem through additional hearings to be held in the near future. I fully expect that those hearings will continue to evidence extremely widespread and diversified support for the specific legislation I, and my cosponsors, are introducing today.

Mr. President, I ask unanimous consent that the text of the bill and a section-by-section analysis be printed in the RECORD.

There being no objection, the bill and the analysis were ordered to be printed in the RECORD, as follows:

S. 1406

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Credit Deregulation and Availability Act of 1981."

TITLE I—BUSINESS AND AGRICULTURAL CREDIT

SEC. 101. Section 511 of the Depository Institutions Deregulation and Monetary Control Act of 1980 (94 Stat. 161; Pub. L. 96–221) is amended to read as follows:

"SEC. 511. (a) The provisions of the constitution or the laws of any State prohibiting, restricting, or in any way limiting the rate, nature, type, amount of, or the method of calculating or providing or contracting for interest, discount points, a time price differential, finance charges or other fees or charges that may be charged, taken, received, or reserved shall not apply in the case of business or agricultural credit.

"(b) 'Agricultural credit' means credit extended primarily for agricultural purposes to a person that cultivates, plants, propagates, or nurtures an agricultural product. 'Agricultural purposes' include the production, harvest, exhibition, marketing, transportation, processing, or manufacturing of an agricultural product and the acquisition of farmland, real property with a farm residence and personal property and services used primarily in farming. 'Agricultural product' includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish and any products thereof, including processed and manufactured products and any and all products raised or produced on farms and any processed or manufactured products thereof.

"(c) 'Business credit' means credit extended primarily for business or commercial purposes, including investment, and any credit extended to a person other than a natural person.

"(d) 'Credit' includes all secured and unsecured loans, credit sales, forbearances, advances, renewals and other extensions of credit.".

SEC. 102. Section 512 of the Depository Institutions Deregulation and Monetary Control Act of 1980 is amended to read as follows:

"SEC. 512. (a) Except as provided in subsection (b) of this section, the provisions of this part shall apply with respect to business and agricultural credit extended on or after April 1, 1980.

"(b) The provisions of this part shall not apply to any business or agricultural credit extended in any State after the effective date (if such effective date occurs on or after April 1, 1980, and prior to three years after the effective date of the Credit Deregulation and Availability Act of 1981) of a State law or a certification that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such State does not want the provisions of this part to apply with respect to credit extensions subject to the laws of such State, except that such provisions shall apply to any credit extended on or after such date pursuant to a commitment to extend such credit which was entered into on or after April 1, 1980, and prior to such later date.

"(c) Credit shall be deemed to be extended during the period to which this provision applies if such credit extension—

"(1)(A)(i) is funded or made in whole or in part during such period, regardless of whether pursuant to a commitment or other agreement therefor made prior to April 1, 1980;

"(ii) was made prior to or on April 1, 1980, and bears or provides for interest during such period on the outstanding amount thereof at a variable or fluctuating rate; or

"(iii) is a renewal, extension, or other modification of an extension of credit made prior to April 1, 1980, and such renewal or extension or other modification is made during such period with the written consent of any person obligated to repay such credit; and

"(B)(i) has an original principal amount of $25,000 or more ($1,000 or more on or after the date of enactment of the Housing and Community Development Act of 1980 or any amount on or after the date of enactment of the Credit Deregulation and Availability Act of 1981); or

"(ii) is part of a series of advances if the aggregate of all sums advanced or agreed or contemplated to be advanced pursuant to a commitment or other agreement therefor is $25,000 or more ($1,000 or more on or after the date of enactment of the Housing and Community Development Act of 1980 or any amount on or after the date of enactment of the Credit Deregulation and Availability Act of 1981); or

"(2) is a renewal, extension, other modification or use of a credit agreement or extension made during such period, including an agreement entered during that period that contemplates future extensions of credit from time to time in which the charges that are assessed for or in connection with credit are calculated from time to time, in whole or in part, on the basis of the outstanding balance and the credit is extended not later than eighteen (18) months after the effective date of the State law or certification.".

TITLE II—CONSUMER CREDIT

SEC. 201. Title V of the Depository Institutions Deregualtion and Monetary Control Act of 1980 (94 Stat. 161; Pub. L. 96–221) is amended by adding at the end thereof the following new subpart:

"Part D—CONSUMER CREDIT

"SEC. 531. The provisions of the constitution or laws of any State prohibiting, restricting, or in any way limiting the rate, nature, type, amount of, or the manner of calculating or providing or contracting for covered charges that may be charged, taken, received or reserved shall not apply to an extension of consumer credit made by a creditor.

"SEC. 532. (a) As used in this part, the terms set forth below shall be defined as follows:

"(1) 'Covered charges' means—

"(A) interest, discount points, a time price differential, fees, charges or any other compensation paid to the creditor or arising out of the credit agreement or transaction for the use of credit or credit services. The term shall not include, however, fees, charges or other amounts paid to the creditor or arising out of the credit agreement or transaction that are paid or arise solely as the result of the failure or refusal of the debtor to comply with the terms and conditions of the debtor's agreement with the creditor; and

"(B) fees or charges paid for the availability of credit, payment mechanism services, or for similar purposes, including periodic, transaction and access fees.

"(2) 'Credit' includes all secured and unsecured loans, credit sales, forbearances, advances, renewals and other extensions of credit, all without regard to the nature of any property that might secure its repayment.

"(3) 'Creditor' means any person that regularly makes extensions of consumer credit, which, for purposes of this definition, shall include extensions of credit that are subject to the provisions of Section 501(a) of this title. A person is not a 'creditor' with respect to a specific extension of consumer credit if, except for this part, in order to assess or collect covered charges in connection with that transaction, the person would be required to comply with licensing requirements imposed under State law, unless such person is licensed under applicable State law and such person remains, or becomes, subject to the applicable regulatory requirements and enforcement mechanisms provided by State law.

"(4) 'Extension of consumer credit' means any credit extended to a natural person primarily for personal, family, or household purposes, except that it does not include credit subject to the provisions of Section 501(a) of this title.

"SEC. 533. (a) Except as provided in subsection (b) of this section, the provisions of section 531 shall apply with respect to any extension of consumer credit made by a creditor on or after the effective date of the Credit Deregulation and Availability Act of 1981.

"(b)(1) The provisions of section 531 shall not apply to any extension of consumer credit in any State made on or after the effective date (if such effective date occurs on or after the effective date of the Credit Deregulation and Availability Act of 1981 and prior to a date three years after such effective date) of a State law or a certification that the voters of such State have voted in favor of any provision, constitutional or otherwise, which states explicitly and by its terms that such

State does not want the provisions of this part to apply with respect to extensions of consumer credit subject to the laws of such State, except that such provisions shall apply to any consumer credit extended on or after such date pursuant to an agreement to extend such credit which was entered into on or after the effective date of the Credit Deregulation and Availability Act of 1981 and prior to such later date.

"(2) Credit shall be deemed to have been extended during the period to which this provision applies, if it—

"(A) is funded or extended in whole or in part during such period, regardless of whether pursuant to a commitment or other agreement therefor made prior to that period;

"(B) was made prior to such period and bears or provides for covered charges that may vary or fluctuate during that period;

"(C) is a renewal, extension, or other modification of a credit extension made before such period and such renewal, extension or other modification is made during such period with the written consent of any person obligated to repay such credit; or

"(D) is extended in accordance with an agreement entered during that period that contemplates future extensions of consumer credit from time to time in which the covered charges are calculated from time to time, in whole or in part, on the basis of the outstanding balance and the credit is extended not later than eighteen (18) months after the effective date of the State law or certification.

"(c) Any law or certification adopted by a State or its voters pursuant to subsection (b) of this section may specify that portion of the extensions of consumer credit made in such State, or those types or kinds of covered charges, to which the provisions of Section 531 will not apply.

"SEC. 534. The Board of Governors of the Federal Reserve System is authorized to publish Board interpretations regarding the scope and application of section 531 of this part. Upon its own motion or upon the request of any creditor, State, or other interested party which is submitted to the Board in accordance with procedures it establishes, within sixty days the Board shall issue an official interpretation regarding the scope of section 531 and its relationship to specific provisions of State law, or shall make public a Board determination (accompanied by an appropriate explanation) that the question presented does not involve a significant issue or does not affect a substantial number of creditors or extensions of consumer credit.".

TITLE III—FEDERAL CREDIT UNIONS

SEC. 301. Section 1757(5)(A)(vi) of the Federal Credit Union Act is amended to read as follows: "rates of interest shall be established by the board of directors of the Federal credit union;".

TITLE IV—EFFECTIVE DATE

SEC. 401. The effective date of this Act shall be the date of enactment of this Act.

SECTION-BY-SECTION ANALYSIS

This bill would amend Title V of the Depository Institutions Deregulation and Monetary Control Act of 1980 to extend the preemption of various state usury ceilings.

TITLE I—BUSINESS AND AGRICULTURAL CREDIT

Section 101.—Existing law preempts state rate ceilings in business and agricultural credit extensions of $1,000 or more, subject to an overall rate limitation of 5 percent over the Federal Reserve discount rate including any surcharges then in effect. This section eliminates that federal rate ceiling on business and agricultural purpose credit transactions. In addition, it eliminates the $1,000 threshold amount that now must be involved in order for the federal preemption provision to be available. The section also adds definitions that describe the types of credit to which this section applies. These definitions would assure that all credit not specifically covered by existing section 501 (a) of Title V of the Depository Institutions Deregulation and Monetary Control Act of 1980 or by section 531 of the Title (which is added by Section 201 of this bill) would be covered by this section. In addition, "credit" has been defined to include all types of credit, which, of course, would include refinancings.

Section 102.—This section makes the business and agricultural credit provision permanent, subject to the right of a state to reject the federal preemption within three years of the passage of this bill. State rejection of the federal preemption that has taken place since April 1, 1980 would still be effective. This bill would not reimpose federal preemption in those states that have rejected it. Under existing law, the agriculture and business purpose credit preemption will expire on March 31, 1983. In addition, this section contains certain transitional provisions that reflect existing provisions in the law. In a change from existing law, the section would add a transition provision that would apply if a state acted to reject the federal preemption. Under this change, the federal preemption will continue to apply to certain activities in connection with credit agreements entered during the preemption period so long as the credit is extended within eighteen months of the state law or certification rejecting the federal preemption.

TITLE II—CONSUMER CREDIT

Section 201.—This section adds a new Part D to Title V of the Depository Institutions Deregulation and Monetary Control Act of 1980. The new Part D consists of sections 531, 532, 533, and 534.

Section 531 preempts all state usury laws in connection with extensions of consumer credit made by a creditor. The section depends heavily on the definitions contained in section 532. In effect, this provision does away with all rate ceilings and mechanisms that attempt to limit the rates or types of charges that may be assessed in connection with consumer credit transactions. The provision does not extend to state consumer protection laws that deal with restrictions, limitations or prohibitions against certain types of creditor activity, which are unrelated to enumerated charges assessed in connection with credit transactions. That is true even if the state provision only applies to specific transactions that may be partially defined by the level or type of charges being assessed. For example, a state law providing that credit transactions with an interest rate in excess of 18 percent cannot be secured by real estate or a law that limits attorneys fees in those transactions would continue to apply.

Other state provisions that would not be affected by this provision include: state laws or regulations that restrict the use of the rule of 78ths in connection with calculating rebates upon the prepayment of credit transactions that involve a precomputed charge; provisions limiting or prohibiting the use of penalties that are imposed solely as a result of the voluntary prepayment in full of a credit transaction; provisions dealing with refinancing responsibilities when a transaction involves a balloon payment; and requirements that contracts use plain English.

In addition to these types of specific provisions, at a more general level the preemption does not extend to: state licensing provisions, even if an element of the licensing standard involves the type or level of charges assessed (for instance, a state requirement that persons extending credit at more than 18 percent must be licensed, would not be affected by the bill); state limitations on the amount or term of a credit transaction; or state limitations on specific charges for goods or services even though they may be sold in conjunction with an extension of credit (for example, state insurance regulatory provisions, including those dealing with permissible premiums for insurance sold in connection with credit extensions, would remain unaffected by the bill).

In effect, section 531 contains the preemptive language and therefore describes the extent of the federal preemption. As noted above, matters that do not fall within its scope are not preempted. This coverage combined with the limitations in the "covered charges" definition contained in the next section, leave intact the states' consumer protection regulatory structures except as they relate to covered charges.

Section 532 provides a series of key definitions that are used in describing the preemptive effect and scope of the bill.

The term "covered charges" identifies the types of charges that are displaced by the bill, and, to an extent, it also limits the preemptive effect of the bill. It is divided into two parts, reflecting the fact that certain charges are assessed for the use of credit while others may more appropriately be characterized as charges for specific services including payment mechanisms that may or may not involve extensions of credit. Both types of fees and charges are preempted under the legislation. Excluded from the definition are fees and charges that arise solely from the debtor's failure to comply with his or her obligations under the credit agreements. As a result, since the preceding section preempts only "covered charges", state limitations on the maximum amount of late charges would not be affected.

The definition of "credit" is similar to that contained in the business and agricultural preemption provisions, simply to make clear that all credit as it is commonly known would be included. The coverage, of course, extends to all kinds of credit extensions, including those secured by any lien on real estate, as well as refinancings.

The term "creditor" refers to persons that regularly make extensions of consumer credit including mortgage credit. In effect, this provision will apply to virtually all persons who are engaged in extending consumer credit. The second sentence deals with the fact that in many states restrictions are tied directly to the interest rate of the credit transaction and licensing provisions. For example, a state may provide that any person who wants to extend credit at a rate in excess of an 8 percent rate contained in the general usury law must be licensed. A lender that wants to make a loan at a rate in excess of 8 percent, for instance 12 percent, must have a license to do so. Various restrictions, including certain "consumer protection" provisions, may be required of those who obtain licenses in order to charge the higher rate. A total preemption would do away with the general usury law and thus the need for a creditor to obtain a license. Since the lender would not need a license, the lender would not have to follow the consumer protection provisions. For that reason the term "creditor" as used in the bill does not include persons who, but for this bill, would have to be licensed under state law in order to assess charges at a specific rate, of a particular nature or type, or in a specific amount or manner, unless that person complies with applicable state licensing requirements. In the example described above, the lender wishing to make a loan at a rate of 12 percent would still have to be licensed and thus follow consumer protection provisions required of licensees. This assures that consumer protections that apply only to licensed creditors will continue to be applied as they are now. For purposes of determining whether licensing would be re-

quired, the rates used would be those in effect in the state before the bill was adopted, subject, of course, to those rates later being changed by the states. Just as is now the case, those who must be licensed would conform to state law requirements as they are interpreted, implemented and enforced by state governments. Requirements relating to covered charges that are preempted by the bill, of course, would not be followed. Persons who are not required to be licensed (because of the type of credit they extend, the rates they charge for credit or otherwise) would not be affected in any way by this part of the creditor definition.

Finally, the term "extension of consumer credit" defines the types of transactions to which the provision will apply. It adopts the general test that all credit extended primarily for personal, family or household purposes is to be included in this preemption.

Section 533 gives the states the right to reject the federal preemption at any time within three years of the date that the bill becomes effective. This section also includes several transitional provisions that answer questions about transactions undertaken at the beginning of the preemption period and, in one case, after a state has rejected the federal preemption. The transitional provisions dealing with the beginning of the preemption period are drawn largely from provisions contained in current law in connection with the preemption of rate ceilings in business and agricultural credit. The transitional provision dealing with activities after the state rejects the federal preemption provides for a phasing-out of the federal preemption. It applies only in the case of open-end credit transactions and then only in connection with credit extended within an eighteen-month period following the state action.

This provision will allow for an orderly transition for creditors who have issued credit cards under the terms and conditions permitted during the preemption period, thus permitting them the time necessary to modify or eliminate those programs if required by the reimposition of usury ceilings. This section also provides that a state may, in addition to an outright rejection of the federal preemption provisions, provide that only certain types of transactions or charges are taken out from under the federal preemptions. It is anticipated that, in order to be effective, state provisions to displace the federal preemption must be clear and precise as to the areas in which the state law has replaced the preemption, with uncertainty being resolved in favor of continued preemption.

Section 534 provides authority to the Board of Governors of the Federal Reserve System to publish official Board interpretations regarding the coverage of the preemption provision. The authority is limited to official Board interpretations in order to permit creditors and other interested parties to have access to a non-judicial interpretative mechanism but to limit the role of the Board to those issues of significant concern to affected parties. As a result, it is anticipated that there will not be a significant regulatory impact due to the use of this interpretative power, which should be used only to resolve clear questions of coverage under the Act.

TITLE III—FEDERAL CREDIT UNIONS

Section 301.—This section amends the Federal Credit Union Act to bring it into conformity with the basic Congressional determination reflected throughout the bill that artificial governmentally-imposed rate ceilings are inappropriate. That conclusion is no less sound for federal ceilings than it is for state ceilings. Rates that may be charged by federally-chartered credit unions are set by federal law. This section reflects that federal as well as state imposed ceilings should be removed, with the rate structure for a particular credit union being determined by its own board. Without this amendment, federally-chartered credit unions would be the only type of creditor still subject to rate ceilings. Thus, this section assures that federal credit unions are not placed at a competitive disadvantage vis-a-vis other creditors.

TITLE IV—EFFECTIVE DATE

Section 401.—This section specifies the effective date of the Act as the date of enactment.●

● Mr. GARN. Mr. President, I rise today as a cosponsor of the Credit Deregulation and Availability Act of 1981 in order to voice my support for this measure that is being introduced by the Senator from Indiana. I believe it is time for the Congress to complete the process begun last year, by deregulating the interest rates that can be charged for consumer credit and by eliminating the restrictions that apply to the Federal preemption of interest rate ceilings on agricultural and business credit.

In the last Congress, as part of the Depository Institutions Deregulation Act of 1980, State usury ceilings on first mortgage credit were preempted in order that funds would be available for consumers wishing to purchase a home. In addition, the Federal law preempted State rate ceilings on agricultural and business credit, to the extent of establishing an alternative Federal ceiling of 5 percent above the discount rate. While the mortgage preemption was permanent, subject to the right of States to reimpose ceilings during a 3-year period, the alternative Federal ceiling for business and agricultural credit is due to expire on May 31, 1983.

I am relating this bit of legislative history in order to refresh the memories of my colleagues as to the extensive precedent for this bill that is being introduced today. It is also important to recognize that the combination of the provisions of the Deregulation Act and the provisions in this bill will remove usury ceilings for all types of credit and thereby permit interest rates to be set by the marketplace.

The Deregulation Act that was enacted last year is also relevant to this legislation for another reason. That law provides for the phase out of interest rate ceilings on deposit accounts, eventually resulting in the complete decontrol of depository institutions' liabilities. It is inherently obvious that financial institutions will never be able to pay market rates on their deposit accounts, if they are not permitted to charge market rates for credit.

This point was emphasized by Treasury Secretary Regan when he indicated, in recent oversight hearings held by the Banking Committee, that the administration favors the preemption of usury ceilings for all loans. He stated that it is unfortunate that the "Federal Government has * * * removed controls on depository institution liabilities faster than it has decontrolled their asset powers." Secretary Regan went on to say: "The most pressing need at this time is for further decontrol of asset powers, to enable depository institutions to better utilize the high cost deposits * * *."

This bill would carry out the views of the administration, and the position of the Congress as evidenced by the enactment of the Deregulation Act last year, by eliminating all remaining usury ceilings.

In order to complete the deregulation of usury ceilings for agricultural and business credit, this bill abolishes the Federal ceiling of 5 percent over the discount rate, as well as the $1,000 threshold, that were contained in last year's legislation. The Federal Reserve Board has always had strong reservations about using the discount rate for indexing permissible loan rates, since it imposes a short-term rate on markets that often involve long-term lending and because it singles out an administered rate which is a tool of monetary policy for a purpose that should be market-oriented. The bill also makes the preemption permanent by eliminating the May 31, 1983 expiration date, subject, of course, to the right of the States to reassert authority over interest rates within their jurisdiction.

The main thrust of this legislation, however, is the removal of usury ceilings for all consumer credit. Enactment of this bill will free up the credit market for consumers with all types of needs, rather than just for homebuyers. First, it permits the market to establish the rate that is charged by Federal credit unions by removing the Federal rate that is contained in the Federal Credit Union Act. It makes infinite sense for the Congress to begin by eliminating the one usury ceiling that is solely within our own jurisdiction. Second, it preempts State usury ceilings governing consumer credit. It is very important, though, to recognize that States retain the authority to override the Federal preemption, provided they take action within 3 years.

Usury ceilings, which are merely "price controls" on money, have become economically counterproductive. During the recent Banking Committee oversight hearings, we heard time and time again about the adverse effects that restrictive usury ceilings have upon consumers, industries and the economy. Interest rate ceilings depress the economy, distort financial markets and result in the unavailability and allocation of credit.

These views on the adverse impact of such ceilings are shared by many industry groups, as well as the administration, the Comptroller of the Currency, the Federal Reserve Board, the Federal Home Loan Bank Board, and the National Credit Union Administration. Even the Federal Trade Commission, while questioning whether there is sufficient competition in credit markets to regulate rates in the absence of rate ceilings, has recognized that "* * * there is substantial evidence that unrealistically low usury rates restrict the supply of credit * * *."

There is no doubt in my mind that the credit market is extremely competitive. There are numerous sources of consumer credit, including banks, finance companies, retailers, credit unions, auto dealers, secondary financing sources, and as of last year even savings and loans. In

fact, interest rate controls obstruct competition as more and more creditors are forced to abandon the marketplace and as new competitors are discouraged from entering the credit market.

In the oversight hearings, the National Auto Dealers Association cited some alarming facts. Commercial banks are now getting out of the auto financing business, resulting in the issuance of automobile credit shifting from commercial banks to finance companies. Even more frightening is the fact that during a 16-month period preceding last January, over 2,000 auto dealers had to close their doors. In my own State of Utah, which has a fairly stable economy, there were 34 changes in ownership of dealer franchises, out of 170 new car dealers, during 1980. That is a 20 percent turnover rate. I am also aware that during a 90-day period late last year, 10 percent of the auto dealers in New Mexico went out of business.

Another example of the anticompetitive impact of usury ceilings is the effect that such ceilings are having upon the ability of the thrift industry to take advantage of the consumer lending authority granted them during the last Congress. As stated in the July 1980 "Report of the Interagency Task Force on Thrift Institutions," thrifts have little incentive to diversify into consumer lending so long as restrictive rate ceilings make such lending unprofitable. The Federal Home Loan Bank Board is supporting usury preemption as one of the measures to assist the ailing thrift industry, since short-term loans would help to diversify their asset portfolios.

Usury ceilings should be eliminated because of the impact they are having in the marketplace. Rather than protecting consumers against an industry that is not competitive, which is one of the principal arguments in support of such price controls, we find that the credit industry is highly diversified and competitive and usury laws are instead having a contrary, anticompetitive impact. Within this very competitive credit market, consumers are free to shop around for an acceptable rate of interest. In fact it has been 12 years since we passed the Truth in Lending Act which assists consumers in making these market choices.

In conclusion, I want to emphasize two very important aspects of this bill. Although this legislation preempts State usury ceilings, it preserves the States' right to reject the Federal action and reimpose rate limitations of any amount and in any form. This is identical to the approach that was contained in the preemption provisions of last year's Deregulation Act. Just as important, is the fact that this bill does not interfere in any way with State consumer protection and licensing laws. Substantive contract and consumer protection law remains solely within the jurisdiction of the individual States. This bill merely eliminates the restrictions on rates or types of charges that may be assessed for credit.

I join Senator LUGAR in voicing my unequivocal support for this measure we are introducing today.●

By Mr. PRYOR (for himself, Mr. HEINZ, and Mr. CHILES):

S. 1407. A bill to amend title 39, United States Code, by strengthening the investigatory and enforcement powers of the Postal Service by authorizing inspection authority and by providing for civil penalties for violations of orders under section 3005 of such title (pertaining to schemes for obtaining money by false representations or lotteries), and for other purposes; to the Committee on Governmental Affairs.

POSTAL SERVICE AMENDMENTS OF 1981

● Mr. PRYOR. Mr. President, today I am introducing legislation which I hope will represent a major breakthrough in protecting our Nation's citizens from fraudulent mail practices through the strengthening of the enforcement powers of the U.S. Postal Service in dealing with mail fraud. This measure will correct the serious limitations currently placed on the Postal Inspection Service which prevent effective investigation of schemes which involve the obtaining of money by means of false representations.

The need for this legislation has been well documented. Mail fraud has grown in epidemic proportions in the last few years and has cheated citizens out of billions of dollars. Ongoing investigation done by staff of the House Select Committee on Aging under the able direction of my distinguished colleague, Chairman CLAUDE PEPPER, has uncovered numerous examples of this type of fraud. We have found cases where elderly citizens have paid $700 for guaranteed cancer cures that turned out to be a set of hypodermic needles and injectible bottles full of seaweed, vitamin B–12, and large doses of poisonous bacteria.

Other common fraudulent ads include those for phony gold coins, bogus land deals, worthless work at home schemes, cures for glaucoma, pills and products to restore sexual potency, and phony arthritis cures from water said to be from Lourdes, but actually from a pond in California.

As a member of the Special Committee on Aging, I was particularly alarmed to learn that over 60 percent of the victims of these frauds are elderly citizens, most of whom are living on fixed incomes and are literally counting their pennies. The Arthritis Foundation estimates that a billion dollars a year is lost in phony arthritis cures alone.

In order to investigate these cases of fraud, the postal service must send a postal money order for the suspected item and have the product tested. If false representation is apparent, the service must solicit the judgment of an administrative law judge as to whether the representations constitute fraud. If considered fraudulent, the service must conduct further investigation until the case is strong enough to be taken to the U.S. attorney.

By the time the postal service recognizes a suspected quack offer, orders the product and submits it for testing, the companies have often closed down their operation or moved it to another State. Even if the company is still in existence, the postal service's only recourse under present law is to ask for a hearing and a court order to block incoming mail from being delivered to the address advertised.

This legislation would correct current law in the following ways. First, it would give the chief postal inspector, the inspector general of the postal service, subpena authority with respect to enforcement of title 39 of the United States Code. Second, in addition, the bill gives the inspection service the authority to tender a money order and immediately receive the suspicious product in order that their investigation may begin at once. Third, the bill gives the postal service the right to approach an administrative law judge and after due process hearings, allow for a court order prohibiting engagement in fraudulent schemes. Companies violating this order would be subject to a fine of up to $10,000 for each violation.

Congressman CLAUDE PEPPER, the distinguished chairman of the House Select Committee on Aging, has introduced an identical measure in the House of Representatives.

Mr. President, I urge prompt enactment of this measure in order to correct this oversight.●

● Mr. HEINZ. Mr. President, as chairman of the Senate Special Committee on Aging I am proud today to be an original cosponsor in the Senate of a measure which would help protect the elderly as well as all citizens by improving the ability of the U.S. Postal Inspection Service to combat mail fraud.

A similar measure is being introduced by my distinguished counterpart, CLAUDE PEPPER, chairman of the House Aging Committee.

Our postal service has about 650,000 employees who last year, in some 40,000 facilities, handled nearly 100 billion pieces of mail. For that same period it generated cash receipts of nearly $18.5 billion. This volume constitutes a full half of the world's mail. Operations of the post office affect millions of people daily.

Most of the mail carried by the postal service consists of personal correspondence and business related materials. While the vast majority of mail is for legitimate purposes, some is not. This latter type, is used by unscrupulous con artists, charlatans, and quacks to defraud our citizens of their hard earned money. Testimony by Postal Inspection Service personnel suggests these frauds, estimated to involve billions of dollars per year, are on the increase.

While these schemes affect all citizens, they are of particular consequence to the elderly. Postal authorities estimate that 60 percent of mail fraud is perpetrated upon older Americans. Although many of the elderly are far from rich, as a group their income approaches $150 billion per year. The elderly are under siege by armies of predators using a staggering array of schemes to spirit away the cash of their victims.

Low individual incomes can limit an older American's mobility. Fear of street crime and poor health also contribute to the elderly's reduced mobility and increased reliance on mail order sales.

Physical impairments or chronic illness, which afflict 86 percent of our seniors, make them more susceptible to phony claims that offer relief and restored youth. Many cheats and swindlers target the elderly because they often die before prosecutorial proceedings or are too frail to serve as witnesses.

The Inspection Service serves the inspector general function for the post office. It has developed a good track record of combating those who abuse the mails. Noting that the elderly are prime targets for the unscrupulous mail order swindlers, service officials have designated the area of postal crimes against the elderly one of their highest priority programs. The national complement of some 2,000 postal inspectors, 2,500 uniform security personnel, administrative support personnel and six forensic science laboratories are highly respected by their peers in the law enforcement community.

The Inspection Service has effectively put an end to innumerable schemes which were costly and potentially dangerous to the elderly consumers they targeted. Phony work at home, travel, investment, and land deals have been exposed and prosecuted. Some of these schemes netted orders amounting to tens of thousands of dollars daily. Quack remedies sold through the mails which have offered relief from cancer, arthritis, failing vision, and poor hearing have also been successfully ended. Frauds amounting to millions of dollars in potential losses are stopped each year. In addition, many of our elderly have been protected from dangerous quack home remedies.

While the Postal Inspection Service has accumulated an impressive track record, much more needs to be done. The service reports several obstacles impede its efforts to obtain an even greater number of successful prosecutions and to permanently ban those convicted of wrong doing from reestablishing their fraudulent operations by simply changing their name or address. This bill would abolish the impediments which prevent even more effective enforcement of postal laws; provide those tools necessary to assist in the prompt gathering of evidence; and close a technical loophole which permits offenders to reactivate their schemes.

Currently, the Inspection Service does not have subpena authority which is routinely granted to all other inspector generals. In order to evaluate whether a product measures up to its advertised claims, the service must send for it in much the same way as a citizen does. Once the product is received, which can be 3 months or more, they must have it evaluated by experts and then approach an administrative law judge or a U.S. attorney for action.

The critical factor is the delay caused by the service having to wait to receive the product before their investigation and enforcement efforts can begin. Those who prey upon the elderly know the nature of this procedure. As a result, they commonly place an ad, take orders for several months, and fill all the orders at one time as they close down their business operation, sometimes reopening under another name someplace else. By the time the Inspection Service receives the product the perpetrators and their assets have vanished.

This bill, which gives the chief postal inspector subpena authority, is one very good solution to this problem. In addition, the bill gives the Postal Service the authority to appear at the address mentioned in a suspicious ad, present a postal money order for the amount of the purchase, and receive immediate access to the product.

A third item in the bill would give the service the authority to move, after a proper due process hearing, and obtain an order barring named individuals from further engaging in the scheme which was the subject of a prior action. Violations of this order could be met with civil penalties up to $10,000 for each violation.

This measure is a responsible approach to a serious problem. The bill adds no new significant costs to the Treasury. This new authority will go a long way toward providing the Inspection Service with the tools necessary to move promptly and effectively against those who victimize our Nation's elderly. I urge my colleagues in the Senate to join in sponsoring this measure and assuring its timely passage.●

● Mr. CHILES. Mr. President, today I am introducing a bill with my colleague Senator PRYOR to strengthen the ability of the postal service to halt fraudulent mail schemes.

The bill we are introducing would give the chief postal inspector subpena authority and immediate access to materials which are being advertised through the mail which the postal inspector has reason to suspect are being misrepresented to consumers. The bill also provides authority for the postal inspector to issue an order to an advertiser to stop activity, and to impose civil penalties of up to $10,000 for each violation of the stop order. These actions could only be taken after appropriate due process hearings.

Using the authority of mail fraud statutes under current law, the Postal Inspection Service has done its job of investigating suspected mail fraud very well in the past. Most cases have been initiated by complaints from consumers who have been bilked out of their life savings by confidence men and dishonest promoters. With the additional authority this bill would give to the chief postal inspector, however, many investigations could be greatly speeded up. In many cases, fraudulent mail-order schemes could be stopped—and the consumer protected—without having to go through the costly and time-consuming criminal court system.

There is certainly precedent for this action. I have been a very active supporter of the inspectors general in all Federal departments and agencies. Legislation which I sponsored in 1978 created statutory inspectors general in 14 major departments and agencies. Last year, Senator PRYOR and I introduced legislation to grant civil penalty authority to the inspector general of the Department of Health and Human Services.

This civil penalty legislation, which will allow HHS to much more effectively combat medicare and medicaid abuse, has been approved by both the Senate Finance Committee and the House Ways and Means Committee and should shortly become law. Earlier this month, I introduced a bill, S. 1327, to give each of the other statutory inspectors general authority to take civil action and to impose civil penalties.

The bill Senator PRYOR and I are introducing today proposes to provide the Inspector General of the Postal Service with the same tools proposed for all other inspectors general.

One of the most vivid examples of how useful this legislation could be was illustrated by testimony I took as chairman of the Special Committee on Aging on fraudulent sales of health insurance policies to the elderly. In one scheme, a group of swindlers in a rural Texas area were virtually printing bogus health and life insurance policies and selling them to elderly women who were afraid of the rising costs of health care. They were, unfortunately, quite easily talked into turning over their life savings to these "insurance salesmen." They were even selling worthless automobile warranty policies—to elderly who did not own cars and who believed they were buying insurance policies.

A very aggressive investigation by the local district attorney finally led to the prosecution and indictment of this group of thieves. The district attorney said at the time he would never have been able to obtain conviction without the help of postal inspectors. It took months before the investigation could be taken to the U.S. attorney, and many more elderly fell victim to this scheme during this lengthy time period. If the legislation we are proposing today had been law at the time, this scheme might have been stopped by postal inspectors as soon as they saw what was going on.

Elderly are frequently victims of mail-order schemes. And once they fall victim, they are often hit again and again. According to the chief postal inspector:

> It is an unfortunate fact, and a commentary on the heartlessness of these fraudulent operators, that an elderly person once victimized derives no immunity thereby from further exploitation. He or she may well be added to a list of proven easy marks to be targeted again by the same fraudulent operator or his associates.

Examples of schemes which regularly recur with elderly persons as victims abound: Insurance policies are written with fictitious beneficiaries, then allowed to lapse after high commissions are collected. Worthless vacant lots are sold to elderly persons who are told they are buying paid-up insurance policies, or interest in a guaranteed real estate venture. Complicated home improvement schemes are devised with fictitious financing arrangements, and then no repairs. Mass mailings solicit homebound elderly people to work at home stuffing envelopes, or other forms of piecework, for a promised payment of very generous wages—but once the required "registration fee" is paid nothing more is heard. Phony "miracle cures" for illness and disabling conditions are also often sold through the mail.

Those who conduct such fraudulent business with the help of the U.S. mails are quick, and often manage to elude detection and prosecution by frequently moving their base of operations. The additional authority which this bill would give to postal inspectors will act as a strong deterrent to this fraud.●

By Mr. HEINZ (for himself, Mr. CHILES, Mr. DOMENICI, Mr. PERCY, Mrs. KASSEBAUM, Mr. COHEN, Mr. GRASSLEY, Mr. DURENBERGER, Mr. DOLE, Mr. DENTON, Mr. D'AMATO, Mrs. HAWKINS, Mr. QUAYLE, Mr. PRESSLER, Mr. COCHRAN, Mr. DANFORTH, Mr. GLENN, Mr. MELCHER, Mr. PRYOR, Mr. BRADLEY, Mr. BURDICK, Mr. DODD, Mr. WILLIAMS, Mr. MOYNIHAN, Mr. BAUCUS, Mr. CRANSTON, Mr. FORD, Mr. DECONCINI, Mr. SASSER, Mr. BENTSEN, Mr. CANNON, Mr. LUGAR, Mr. CHAFEE, Mr. HAYAKAWA, Mr. HATCH, Mr. MATHIAS, Mr. INOUYE, Mr. MCCLURE, Mr. SPECTER, Mr. SYMMS, Mr. WARNER, Mr. KASTEN, Mr. TSONGAS, Mr. SARBANES, Mr. STENNIS, Mr. ZORINSKY, Mr. EAGLETON, and Mr. KENNEDY):

S.J. Res. 92. Joint resolution to authorize and request the President to designate the week of September 6, 1981, as "Older Americans Employment Opportunity Week"; to the Committee on the Judiciary.

OLDER AMERICANS EMPLOYMENT OPPORTUNITY WEEK

Mr. HEINZ. Mr. President, I am pleased to introduce today, along with over 50 cosponsors, a joint resolution to authorize and request the President to designate the week of September 6 through 12, 1981 as "Older Americans Employment Opportunity Week." The chairman and ranking minority member of the House Select Committee on Aging, Representatives CLAUDE PEPPER and MATTHEW RINALDO, are introducing this resolution today in the House of Representatives.

This resolution is important for several reasons. First, older workers represent a large but neglected national resource. Only 22 percent of individuals over age 60 are presently employed. National polls and research findings indicate that many more would like to find full- or part-time jobs, but feel that the opportunity is not there. They are capable and often need job earnings to meet income needs in a period of high inflation.

Second, some employers are turning to older workers as a resource—recognizing that their skills and experience are of great value in the workplace. They are initiating hiring, retraining, second-career and job retention programs for older workers. Other employers, however, do not perceive older workers in such a positive light and often practice, consciously or unconsciously, age discrimination against them.

The resolution will call attention to both the potential of older workers and some of the problems which block employment opportunity for them. Special programs will be held around the country to mark this important week and to encourage employers to generate employment opportunities for older persons. Labor organizations, industry groups, and membership organizations which represent older Americans will be involved in this effort. Employers will become more aware of older workers as a resource and older workers will become more aware of job opportunities and job retention options. The results of the promotion will be of benefit to older workers, employers, and the Nation as a whole.

In addition, expanding job opportunities for older Americans who wish to continue working is one of the best long-term solutions to our present retirement income and social security financing problems. The Special Committee on Aging recently held a hearing on "Early Retirement: Implications for Social Security" at which experts, and representatives of labor and management testified. There was a clear consensus among all witnesses that we in the Congress should be more active in promoting employment opportunities for older workers.

Mr. President, I realize that this resolution is just a small step toward achievement of this goal, but it is a step that is worth taking now to help dramatize the need for action. As chairman of the Special Committee on Aging, I will be working actively toward the development of substantive policies to further greater employment opportunities. I believe that we can no longer ignore the vast potential contribution that these Americans are capable and desirous of making to our society. I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 92

Whereas our Nation's citizens over age 65, now representing over 11 percent of our population with this rate expected to increase steadily over the coming years and decades, constitute a major national resource;

Whereas increasing numbers of our older citizens, being willing and able, are looking for opportunities to gain employment, or remain in the work force in order to serve their communities and the Nation;

Whereas older citizens, having accomplished so much in the past for the Nation and who continue to contribute to the Nation's productivity and service to others, should be encouraged to continue in employment roles that utilize their strengths, wisdom, and skills;

Whereas career opportunities reaffirm the dignity, self-worth and independence of older persons by facilitating their decisions and action, tapping their resources, experience, and knowledge, and enabling their continued contribution to society;

Whereas it has been demonstrated through title V of the Older Americans Act of 1965, which supports a part-time program for older Americans, that older workers are extremely capable in a variety of job roles;

Whereas recent studies conducted by the United States Department of Labor and other organizations indicate that, in many cases, employers prefer to retain older workers or rehire former older employees due to their high quality job performance and low rates of absenteeism; and

Whereas Congress recognizes the importance of the continued participation of senior citizens in our Nation's work force and encourages expanded careers and greater job opportunities for these individuals by increasing the awareness of the valuable experience and wisdom offered by our Nation's elders: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized and requested to issue a proclamation designating the week of September 6, 1981, through September 12, 1981, as "Older Americans Employment Opportunity Week", and calling upon—

(1) our Nation's employers and labor unions to give special consideration to older workers with a view toward promoting expanded career and employment opportunities for older workers who are willing and able to work and desire to remain employed and to retired seniors who wish to reenter the work force;

(2) voluntary organizations to examine the many fine service programs which they sponsor with a view toward expanding the important service roles older workers are engaged in;

(3) the United States Department of Labor to give special assistance to older workers through job training programs sponsored by the Comprehensive Employment and Training Act, job counseling through the United States Employment Service and additional support through its Older Worker Program; and

(4) the citizens of the United States to observe this week with appropriate programs, ceremonies, and activities.

● Mr. CHILES. Mr. President, today I have the privilege of cosponsoring a Senate joint resolution requesting the President to designate the week of September 6, 1981, through September 12, 1981, as "Older Americans Employment Opportunity Week." The more we study and investigate the desires and preferences of older persons, the more we learn that increasing numbers of older persons want to remain involved in productive activity well beyond the traditional age of retirement.

With the arrival of the 1978 amendments to the Age Discrimination in Employment Act, Congress ushered in a new era for America's older workers. The mandatory retirement age for Federal employees was eliminated completely, and the age in the private sector was raised from 65 to 70.

Mr. President, with the legal door now open to end mandatory retirement, and with vast numbers of today's workers due to reach their retirement years at the beginning of the next century, we must begin now to create new opportunities for the older worker. In the spring of 1980, I chaired a new series of hearings for the Special Committee on Aging on "work after 65: options for the 80's." We reviewed a 1978 national survey, conducted by the Harris poll, which provided detailed information about the desire of older persons to have expanded work oportunities—and sometimes also about the frustration which they feel in not being able to work.

Current employees and current retirees were asked what they would prefer as their retirement-work situation. About 25 percent of each group said they would prefer some kind of part-time work after retirement. But in a followup question, only 8 percent of the already-

retired persons said they were in fact able to find part-time employment. Interestingly, the survey also asked all retired persons: "Assuming you would have had an adequate amount of retirement income, what would you have preferred to do when you reached retirement age?" Forty-nine percent of the current retirees responded that they would prefer work.

Mr. President, the witnesses at these hearings included psychologists, economists, labor force experts, and presidents and vice presidents of corporations with long histories of retaining and hiring older workers. All the witnesses agreed on a basic fundamental principle: not only do many older persons want to remain active on the job, but they are able, productive, enthusiastic, and flexible workers. The major missing piece to this jigsaw puzzle is simply opportunity. It is for these reasons, Mr. President, that I strongly urge my colleagues to support this resolution calling for the designation of the week of September 6 through 12, 1981, as "older Americans employment opportunity week."●

● Mr. DURENBERGER. Mr. President, in designating the week of September 6–12, Older Americans Employment Opportunities Week, Congress will reaffirm its commitment to the older worker. Labor Day week is an especially appropriate week for us to celebrate the achievements of older Americans and encourage continued support for their employment opportunities. At a time when all America's resources are being closely appraised, we cannot afford to ignore one of our greatest resources—our older workers.

We need only look to the White House to see a man well past retirement age doing an excellent job. At 70, Ronald Reagan is handling the most grueling job in Government. In the private sector, his 70th birthday would have marked the point of mandatory retirement. Instead, it marked the beginning of a new phase in his public service, and a new beginning for all Americans.

My friend and fellow Minnesotan, Warren Burger, is another older American serving the public well past normal retirement age. The Chief Justice will celebrate his 74th birthday this September as the highest official in our judicial system. As Chief Justice of the Supreme Court, he carries out his weighty responsibilities with wisdom and prudence. How much poorer would this Nation be if we deprived ourselves of men such as Warren Burger?

We cannot afford to dismiss the benefits of age too lightly. These men and hundreds of men and women like them are contributing to the welfare of our country well past the magic age of 65. But there are equally able Americans who see retirement not as a retreat, but as defeat. Through mandatory retirement regulations, veiled job discrimination and other barriers, many would-be older workers are forced out of the job market. This is an unacceptable situation. If this resolution does anything, it will reassert the positive contributions older workers have to give.

The opportunity to continue working is just as important as the opportunity to retire. We all gain when the older worker has the option of continued employment whether he or she stays in the same position, or chooses other alternative employment possibilities. We gain a senior citizen who is more economically self-sufficient. We gain a senior citizen who is a supporting member of our economy. We gain a senior citizen who feels a sense of purpose and usefulness.

We need to focus on what we in Congress can do to encourage employment opportunities among the older members of the work force. Through the interest and efforts of my colleague, Senator HEINZ, we on the Special Committee on Aging will continue to explore employment options for older workers. The needs and opportunities for older Americans is a challenge that grows 1,400 people stronger every day. I look forward to meeting this challenge and feel that this resolution is a vocal step in the right direction.●

By Mr. HAYAKAWA (for himself, Mr. HATCH and Mr. NICKLES):

S.J. Res. 93. Joint resolution to clarify that it is the basic policy of the Government of the United States to rely on the competitive private enterprise system to provide needed goods and services; to the Committee on Governmental Affairs.

PRIVATE INDUSTRY TO SUPPLY GOVERNMENT WITH GOODS AND SERVICES

Mr. HAYAKAWA. Mr. President, I introduce today, together with my colleague in the House, DAVID DREIER of California's 35th District, a joint resolution that reaffirms the policy now embodied in the Office of Management and Budget Circular A–76. Senators ORRIN HATCH and DON NICKLES are original cosponsors.

The joint resolution states:

It is the policy of the Government of the United States to rely on competitive private industry to supply the products and services it needs whenever competitive industry prices are available.

For some years I have observed the tendency of the Federal Government to assume and retain functions that should be left to the private sector of the economy. Though it has long been the government's policy to rely on the private sector for goods and services, that policy has not been applied equally throughout all branches of the government.

As a result, Federal employees, according to the GAO's estimates, perform 11,000 commercial or industrial activities that could be done by private firms. Taxpayers pay near $19 billion for these goods and services, and in doing so they directly subsidize competiton for private industry.

There are certain government functions that must be performed by the government, such as formulating policy. But I do not believe government resources should be used to duplicate functions that are properly available from the private sector at a lower cost.

This may sound like a philosophical problem, but to the owner of a small business it is a matter of economic survival. Struggling with inflation, interest rates and excessive regulation, the last thing a small business owner needs is competition from the government financed by tax moneys.

Let me give some examples of the government activities that duplicate efforts of the private sector: Printing and binding, data entry and processing, food service, laundry service, audio-visual production, library services, and research.

If the $19 billion spent on such goods and services were channeled into the private sector rather than into government agencies, three important things would happen:

First, the government would get the same services at reduced cost. That is because private enterprise has an incentive government agencies do not have: The profit motive. The Small Business Administration has conservatively estimated that $3 billion of that $19 billion could be saved.

Second, private industry would benefit by increased business that would stimulate the whole economy.

Third, and this is important, government workers and resources would be freed to concentrate on functions that must be performed directly by the government. In this time of increasing demands on government resources, this increased efficiency will help preserve or even increase the level of government service provided to the public.

The General Accounting Office has prepared a report, for release today, that examines the extent of government competition with the private sector. The GAO and the Office of Management and Budget agree that congressional action is needed to establish as a matter of policy throughout the government that private industry should be used to supply goods and services whenever that is practical and proper.

This is not a shift in government policy; it is a clarification of government's relation to private enterprise and a clarification of a policy that has been subject to varied interpretations and shifts in emphasis over the years.

As a further exploration of this issue, on Wednesday, June 24, the Small Business Subcommittee on Advocacy and the Future of Small Business—of which I am chairman—will open a series of hearings examining the effects of government competition on small business. We will examine specific industries in which that competition is a significant problem, and we will hear from owners of businesses that have been crippled or threatened with extinction by government decisions to provide similar goods and services.

Mr. President, I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 93

Whereas it is the function of Government to establish Federal policies and manage Federal programs established by or pursuant to law; and

Whereas it is the function of the private enterprise system, which is the primary source of national economic strength, to provide goods and services needed in that endeavor; and,

Whereas optimum efficiency, economy, and productivity can be achieved if the Govern-

ment relies on competitive procurements from private enterprise for its needed goods and services; and

Whereas in a democratic free enterprise system, the Government should not compete with its citizens: Now therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That it is the general policy of the Government of the United States to rely on competitive private enterprise to supply the products and services it needs whenever competitive industry prices are available. This policy shall be administered by the Director, Office of Management and Budget in coordination with the Administrator, Office of Federal Procurement Policy.

ADDITIONAL COSPONSORS

S. 46

At the request of Mr. THURMOND, the Senator from Maryland (Mr. SARBANES) was added as a cosponsor of S. 46, a bill to amend title 5 of the United States Code to permit present and former civilian employees of the Government to receive civil service annuity credit for retirement purposes for periods of military service to the United States as was covered by social security, regardless of eligibility for social security benefits.

S. 85

At the request of Mr. BENTSEN, the Senator from North Carolina (Mr. HELMS) was added as a cosponsor of S. 85, a bill to amend the Internal Revenue Code of 1954 to exempt independent producers and royalty owners from windfall profit tax on the first 1,000 barrels of daily production.

S. 1175

At the request of Mr. BOSCHWITZ, the Senator from Florida (Mrs. HAWKINS) was added as a cosponsor of S. 1175, a bill to amend the Internal Revenue Code of 1954 to exclude fringe benefits from the definition of gross income.

S. 1214

At the request of Mr. BOSCHWITZ, the Senator from Florida (Mrs. HAWKINS) was added as a cosponsor of S. 1214, a bill to amend the Internal Revenue Code of 1954 to eliminate the limitation on the interest deduction for interest paid or accrued on investment indebtedness.

S. 1235

At the request of Mr. D'AMATO, the Senator from Alabama (Mr. DENTON), the Senator from Florida (Mrs. HAWKINS), the Senator from Alaska (Mr. MURKOWSKI), and the Senator from Utah (Mr. HATCH) were added as cosponsors of S. 1235, a bill to exempt certain matters relating to the Central Intelligence Agency from the disclosure requirements of title 5, United States Code.

S. 1237

At the request of Mr. HEFLIN, the Senator from Louisiana (Mr. LONG) was added as a cosponsor of S. 1237, a bill to provide grants to the 1890 land-grant colleges, including Tuskegee Institute, for the purpose of assisting these institutions in the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings to strengthen their capacity for research in the food and agricultural sciences.

S. 1310

At the request of Mr. BOSCHWITZ, the Senator from Florida (Mrs. HAWKINS) was added as a cosponsor of S. 1310, a bill to amend the Internal Revenue Code of 1954 to provide certain community development, employment, and tax incentives for individuals and businesses in depressed areas.

SENATE JOINT RESOLUTION 74

At the request of Mr. MATHIAS, the Senator from Missouri (Mr. DANFORTH) was added as a cosponsor of Senate Joint Resolution 74; a joint resolution designating the week of October 4 through October 10, 1981, as "National Diabetes Week."

SENATE RESOLUTION 158—RESOLUTION TO HONOR UNIVERSITY CITY, MO., ON ITS 75TH ANNIVERSARY

Mr. DANFORTH (for himself and Mr. EAGLETON) submitted the following resolution, which was referred to the Committee on the Judiciary:

S. RES. 158

Whereas, this year the people of University City, Missouri, celebrate the seventy-fifth anniversary of the city's incorporation;

Whereas, from its beginnings, University City, Missouri, has been a leader in devising progressive, innovative, and successful responses to perplexing municipal problems;

Whereas, in 1920, University City, Missouri, pioneered in the field of city planning by creating a City Plan Commission, and, through planning, secured, for the residents of the city, beautiful and functional parks, quiet and tree-lined residential streets, and a unique commercial district commonly known as the Loop;

Whereas, in 1947, the City of University City, Missouri, became the first municipality in St. Louis County to adopt a home rule charter providing the council-manager form of government;

Whereas, the City of University, Missouri, distinctive among cities for racial, ethnic, and religious diversity of its populace, has fostered harmony and unity in the community; and

Whereas, University City, Missouri, is an example for the Nation in achieving fair and open housing and integrated schools, and in providing an extensive program of services for its senior citizens; Now, therefore, be it

Resolved, That the Senate honors the City of University City, Missouri, and its people and leaders during their Diamond Jubilee celebration and commends the City of University City, for exemplary achievements and continuing leadership in urban planning and development.

SEC. 2. The Secretary of the Senate shall transmit a copy of this resolution to the City of University City, Missouri.

● Mr. DANFORTH. Mr. President, on behalf of myself and my senior colleague from Missouri, Senator EAGLETON, I am pleased today to offer a resolution in honor of the people of University City, Mo., a city which celebrates its 75th anniversary this year.

University City is a place of extraordinary ethnic, religious, and racial diversity. However, this diversity—which has meant conflict and strife for many cities—has been a source of strength for the people of University City. University City stands as an example for the Nation for the achievements it has made in securing open housing and integrated schools, for the harmony and unity that characterize the city. It has not been a city without problems—but it has faced its problems and emerged stronger for the experience.

Novelist Stanley Elkin once observed, University City "looks like what cities are supposed to look like." Above all, it is a nice place to live.

I ask unanimous consent that Stanley Elkin's homage to University City, "Why I Live Where I Live," be printed at this point in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows;

WHY I LIVE WHERE I LIVE

(By Stanley Elkin)

Because, to me, it has always looked like what cities are supposed to look like. Like silhouette architecture in funny papers. Moon Mullins's downtown, Krazy Kat's, warehouse style, a wholesale modality, the furrier's provenance, the jeweler's. Gilt lettering in upper-story windows. And brick from the golden age of brick. Bricks so high it could be the dumping ground of brick, stacked as counter on a wondrous roll. And because grand juries seem as if they would meet here, returning true bills, parsing corruption: racketeers whose rackets are old-timey and flagrant and tinged with muscle—teamster stuff, laundry trucks that don't leave the garage, taxis crippled and tampered axles under the trucks that bring the milk, the bread, the paper. Vending-machine brutalities. Soft-drink killings.

And because I'm an American of the vaguely professional class, a tenured academic, the least mobile of men, and you live where they ask you in this business and get maybe two or three solid offers in a working lifetime, and because I've been luckier than most or less brave perhaps and have only received one—two if you count the feeler, pursued halfheartedly on both our parts, from the University of California in Santa Barbara thirteen years ago, and we tried it for a summer and didn't much like it, my wife because it made her nervous to go for bread at eighty miles an hour and me because, as I say, I'm not brave and didn't know if I'd like my friends.

Which is really why I live where I live.

I live in University City, Missouri, a block from the St. Louis limits. (The city of St. Louis is self-contained as an island, exists in no county, is, in a way, a kind of territory, a sort of D.C., a sort of Canal Zone, gerrymandered as Yugoslavia, its limits fixed years ago, before the fact, staked out, one would guess, by a form of sortilege, a casting say, of vacant lots, working farms and nineteen miles of the Mississippi River into the equation, the surveyor's sticks and levels and measures doing this tattoo of the possible, of the one-day-could-be, shaping a town like a stomach, stuffing it with ellipses, diagonals, the narrows of neighborhood.) University City is not so much a suburb as St. Louis's logical western addendum. There are over ninety incorporated municipalities surrounding St. Louis, closing it off like manifest destiny, filling it in like some jigsaw of the irrefutable, Mondrian's zones and squares like a budgeted geometry. And I live where I live because of the civilization here.

On the third Tuesday of every month there is a salon at the home of Eli and Lee Robins. The Insight Lady is there (I shall not blow her cover here but can tell you that she is a heroine of song and story, prose and poetry, and, like her husband—you couldn't drag her name from me—the older man and downtown lawyer Albert Lebowitz, a native) putting out her insights like hair or finger-

nail. Deans are there, chairmen of departments in street clothes. It's all very brilliant.

Eli's spread (both he and his wife are scientists, but the money is Texas) is smaller, I think, than the palace at Versailles but much grander than Madame Récamier's. And because, like me, he is a multiple sclerotic, much of the house is tricked out in the customized hardware of the handicapped, all the expensive gym-crackery of safety: stands of parallel bars like private roads, handles that bloom from the doorways like a steel ivy, cunning chair lifts like an indoor Aspen, Eli's electric cart, Eli's motor pool. We gather on these Third Tuesdays in the smaller of the two living rooms, the library really but with its phones hard by the furniture—I want to sit on the leather chair and call the couch—it could be some plush boiler-room operation. There are discrete files, the latest in dictating equipment, everything state-of-the-art, everything convenient; and for dark reasons I am at home in this house. (I'm crippled too.) And once a month, at the Robinses', I feel free to go public, to clumsy my coffee on the furniture, to crumb the carpet and ash my neighbors as myself. But chiefly to talk. At the top of my voice at the top of my form, vicious, a gossip, clever as a fag, with, to save me, only this: that I am never the hero of my ancedotes but always—I'm crippled too—the fall guy, whiner take all. (On New Year's Eve of 1963, before Eli's disease, before my own, Joan and I were invited to a party at the Robinses'. I had not really known about them, that they lived in a house as big as all outdoors. I had assumed that I assume about everyone I meet, that their backgrounds are the same as mine, that we drive the same cars, get the same mpg, earn the same salaries, and blue is our favorite color. That we're all each other's doppelgängers—how otherwise could we meet in this life?—that we all serve the same conditions, that we share the world like weather. The main party was going on in the larger of the living rooms, a room like a grand salon on an ocean liner, and though there might have been a hundred people in it, I swear to you it looked empty. We left just after midnight, and outside our third-floor walk-up Loop apartment building I kicked dents in the door of our '62 Chevrolet Biscayne. I ripped the ring off the steering wheel. I rent my clothes like an Orthodox. Why not? This was grief, this was grief too. It was years before we went back. When we owned our own home. When disease had collateralized us, when demyelination had doppelgänged us again.)

And this is the point, I think. I live where I live for the odd safety there really is in numbers. Are the crippled as comfortable in Santa Barbara? Could I aspire to Eli Robins's fail-safe gewgaws, his remote-control life, his disease's nifty setup like a model railroader's?

I have been keeping track now since the first Third Tuesday and have never seen the same hors d'oeuvre twice. And that's another thing about St. Louis, about University City. It is the hors d'oeuvre hub and honeypot of the world, its quiche capital. The deli is lousy and the entrées only middling—I mean its steaks and roasts, its chops and chickens—but there are knives, forks, spoons, and stars in its appetizers and something in its soups to float your heart. (It could be the water. Nowhere I have ever been is it ofter. In the shower soap comes apart in your hands. It lathers like spindrift, froths and foams like the trick floors of discos. You're clean five to ten minutes sooner than you are in New York or California.)

There is, I think, an appetizer vision, the aperitif heart, something in the soul or character that bumps up hunger without the means or even desire to satisfy it, a teaser temperament—*forshpeiz* forsooth, foreplay forever. All I know is that I love that hour to hour and a half before we go in to dinner (it's no longer Third Tuesday; we're at Martha Rudner's, at the Stangs', the Teitlebaums', the Gasses', the Pepes'), when the pâtés are passed, the barbecue chicken wings, the plates of pot stickers, the stinging dips and smarting cheeses, all that spicy consubstantiation, the lovely evening's high season of high seasoning, and the talk is general and the gazpacho melts in my mouth. And I live where I live, could be, because I am such a good guest, comfortable in other people's houses as a man in his club and under no obligation to bring wine, flowers, houseplants, the candy gifts and door-prize alms (empty-handed even in a hospital room), taking hospitality for granted as a Greek in an epic, never the first to leave though always the first to leave the dinner table, eschewing tea, coffee, the sugar-silted linen and the sedimental crumbs, no coffee klatcher but the Brandy-and-Soda Kid himself, cordial at cordials and drawn by a drawing room.

Inviting the others, ready to do business, calling "Come here, come here, the fire's still going. Bring your cups. Come where it's comfortable." And I live where I live because they come when I call them—well, what are friends for?—and know things I don't. And because I love to hear Julie Haddad, the Deep Throat of real estate, give the latest market quotation on a neighbor's house, or not *even* a neighbor's, a stranger's, someone the next town over, and Patty Pepe explain the complicated peerage of west-county Jews.

I don't mean gossip in the ordinary sense. There is little hanky-panky where I live. In the twenty years I've lived here only one of my friends has been divorced. No one seems to have affairs. Missouri lust is career-oriented, not sexual. It's one on oneself, not one on one. We want Nobel Prizes, things within Pulitzer's gift, National Book Awards, grants, honors, invitations, hosannas. We talk the ego's bottomless line. Or *I* do. And I live where I live because there are people who will listen to me speak Self like a challenge dance. Not boasting, understand, not look-Ma-no-hands but something involuntary, reflexive as perspiration, not loose lip, loose *tooth*, worrying away at this sweet-and-sour tooth I have in this city whose specialty is appetizer and whose shape on a map looks like a stomach. I sound awful but it's not what you think.

I haven't seen Bill Gass for a month, say. I bring him out, I draw him forth like a man doing card tricks, I work him close up as a Vegas mechanic, my sleight-of-mouth circumstances and the opening bid of my own poor itinerary in my juggler's distracted jabber. The same with Steve Teitlebaum, John Morris, Howard Nemerov, the same with everybody. (Not boasting, understand. *I* know where I've been. I need to know where *these* guys are.) All right, it *is* what you think; but win or lose, it clears my air.

And *this* occurs to me. The estimated population of the city of St. Louis on January 1, 1980, was 479,000, that of the greater metropolitan area, 2,410,628. I've lived here twenty years and have only two friends who work downtown. How many people living in Houston could say the same? Who in greater Omaha could? Who in Chicago? Boston? the Bronx? (Who, for that matter, in St. Louis?) When I moved here in 1960, the city's population was just over 750,000. Urban flight shapes my skyline. It cozies connection and snugs my skyscrapers. It's good, I mean, for the architecture and, the city emptied out, lends a scaled-down look to things. Downtown seems someplace foreign. Or no. *Not* foreign. An American city, but an American city like some Brechtian projection. St. Louis like the City of Mahagonny. And I live where I live because there's nothing beautiful to look at in the store windows. Because reality looms in them like a loss leader, furniture people as low company or the circumstances of people on fixed incomes, the fashions dated as nurses' uniforms, a dry-goods sort of town, a hardware one. And I look. I do. Once or twice a month, at night, in the warmer weather, we cruise downtown's empty streets. We park, we window-shop.

Me, most of my friends, we don't dress well. We are barely presentable. And if we're out of the shower ten minutes quicker than New Yorkers, we're out of the bedroom fifteen. We are not laid back. Laid back is studied, sandaled and lightly leathered, capped and cute. It goes with the hairdo. We don't have hairdos. I'm fifty years old and dress like someone on *Bowling for Dollars*, like a guy driving cross-country. Third Tuesdays *and* downtown. The sweet-and-sour heart.

And I live where I live because I am comfortable, because the climate is equable, because the movies come on time but the theater is a road show, second company, because the teams are dull but we get all the channels, because there can't be four restaurants in the city that require jackets and ties and there's a $25,000 ceiling on what city employees may earn and I make more than the mayor, the head of the zoo. Because I feel no need to take the paper. Because I feel no need.

And finally because nowhere I have been do so many other people seem to live so well. St. Louis, and University City too, is a city of sealed neighborhoods, gated as railroad crossing of blocked-off streets and private places chartered as nation, zoned as meteorological maps, the enclaves and culs-de-sac of stalled weather. Not fortress but subdivision America, everything convenient, stone's-throw as Liechtenstein. My subdivision, Parkview, is separated from Ames Place, the subdivision just west of it, by a walk called the Greenway (I could throw a ball into it, but it's almost a mile by car—the closed-off streets, the wrought-iron gates that are opened on some complicated schedule I have never been able to learn), and, like so many other of the city's private neighborhoods, it is very beautiful. The houses are large. They are brick or stone, two stories or three, with slate roofs, red-tiled, green. Eighty percent of the homes were built between 1906 and 1915 in Gustav Stickley's Craftsman Style. No two are alike, but I have a sense of snowflake disparities, a fraternal-twin aesthetics.

One Third Tuesday a few months back I was telling the Insight Lady's husband that there was nothing I really wanted anymore, that I was just about consumered out. I have a videotape recorder, the TV camera that goes with it, a pool (Parkview looks like something out of *Meet Me in St. Louis*, but we're pooled now as Beverly Hills), quad, the middle-class works. It wasn't time yet to go into the electric golf cart; there was nothing I wanted. Well, maybe *one* thing, but . . . I described plaques I had seen on houses in London where authors had lived. A few weeks later Al brought over a replica of what I'd described. A dark lead slab with raised copper letters:

STANLEY ELKIN
1967–

He drilled holes into the brick for the screws and mounted it on my house.

I'm waiting for Joan. We're going to Bobby's Creole for the barbecue shrimp and then to a movie. I'm sitting on the top stair, next to the railing, at the foot of our walk. Across the street is a triangular park with its honey locusts and tall old pines and oaks. I look toward Pershing at the beautiful homes, seventy-five years old some of them, good as new, better. How lovely. I think. How fortunate we are. Up and down my street, Westgate, the houses make a long gentle convex. Three blocks off, beyond the northern gates, is Delmor Boulevard, a sort of student village, the shops recycled, periodically changed as marquee, head shops where

kosher butchers once thrived, the Varsity theater with its 3-D festivals, the Tivoli, which changes its double bill nightly, health food stores and bike shops, record stores, book, boutiques and the co-op grocery, the open-air market, a gallery, Bobby's Creole, where we're going. An odd nostalgia seems to hang over it all, a sawdust chic, grubby and moving. There's a store that sells old movie posters and Blueberry Hill, a pub where the serious darts players go. I lived off Delmar once, as I do now, when it was a ghetto for Orthodox Jews. But one sort of earnestness is not so different from another. Kids', old folks'. I've come a long way from St. Louis. Three or four blocks.

I live where I live. I have a plaque that says so. I wait for my wife and feel fine, within the gates, enjoying for as long as the tenure holds my tucked-in, deck-chair life.●

● Mr. EAGLETON. Mr. President, the city of University City, Mo., will celebrate its 75th anniversary of incorporation during 1981. It is a fitting tribute that we pay to the citizens of University City in adopting this resolution commemorating the city's diamond jubilee.

University City has distinguished itself in numerous ways throughout its history. It was a leader in progressive government; it pioneered the field of city planning; it has traditionally maintained a high-quality, livable environment for its diverse citizenry; and it holds the promise of future leadership in these and many other fields.

Mr. President, I ask that we adopt this resolution congratulating all of University City on its achievements.●

SENATE RESOLUTION 159—ORIGINAL RESOLUTION REPORTED WAIVING THE CONGRESSIONAL BUDGET ACT

Mr. THURMOND, from the Committee on Armed Services, reported the following original resolution, which was referred to the Committee on the Budget:

S. RES. 159

Resolved, That pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to the consideration of S. 1408, a bill to authorize certain construction at military installations for fiscal year 1982, and for other purposes.

Such waiver is necessary because section 402(a) of the Congressional Budget Act of 1974 provides that it shall not be in order in either the House of Representatives or the Senate to consider any bill or resolution which, directly or indirectly, authorizes the enactment of new budget authority for a fiscal year, unless that bill or resolution is reported in the House or the Senate, as the case may be, on or before May 15 preceding the beginning of such fiscal year.

For the foregoing reasons, pursuant to section 402(c) of the Congressional Budget Act of 1974, the provisions of section 402(a) of such Act are waived with respect to S. 1408 as reported by the Committee on Armed Services.

AMENDMENTS SUBMITTED FOR PRINTING

DEPARTMENT OF JUSTICE AUTHORIZATION ACT

AMENDMENT NO. 98

(Ordered to be printed and to lie on the table.)

Mr. BIDEN (for himself and Mr. HEFLIN) submitted an amendment intended to be proposed by them to the bill (S. 951) to authorize appropriations for the purpose of carrying out the activities of the Department of Justice for fiscal year 1982, and for other purposes.

AGRICULTURE AND FOOD ACT OF 1981

AMENDMENT NO. 99

(Ordered to be printed and to lie on the table.)

Mr. LUGAR (for himself, Mr. PELL, Mr. TSONGAS, Mr. COHEN, Mr. DANFORTH, Mr. DURENBERGER, Mr. HAYAKAWA, Mr. JEPSEN, Mr. PERCY, Mr. STAFFORD, Mr. HATFIELD, Mr. RIEGLE, Mr. LEVIN, Mr. HUMPHREY, Mr. BOSCHWITZ, Mr. GARN, Mr. GORTON, Mr. HATCH, Mr. HEINZ, Mr. QUAYLE, Mr. SPECTER, and Mr. GRASSLEY) submitted an amendment intended to be proposed by them to the bill (S. 884) to revise and extend programs to provide price support and production incentives for farmers to assure an abundance of food and fiber, and for other purposes.

PRICE SUPPORT PROGRAM FOR PEANUTS

● Mr. LUGAR. Mr. President, today I am submitting an amendment to S. 884 that would eliminate the current system of acreage allotments and poundage quotas for peanuts and substitute a straight-forward loan support program parallel to those for corn, wheat, soybeans, rice, and other crops.

Twenty-one of my colleagues have joined me in my efforts to free peanut farmers, processors, and consumers from the highly restrictive peanut program. My amendment also has the support of the AFL–CIO, U.S. Chamber of Commerce, and the National Taxpayer's Union.

Mr. President, I ask unanimous consent that the text of the amendment be printed in the RECORD.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

AMENDMENT NO. 99

On page 197, beginning with line 13, strike out all down through line 2 on page 212 and insert in lieu thereof the following:

REPEAL OF EXISTING PROGRAM

SEC. 701. (a) Effective beginning with the 1982 crop of peanuts, part VI of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1357–1359), relating to peanuts, is repealed.

(b) Effective beginning with the 1982 crop of peanuts, the Agricultural Act of 1949 is amended—

(1) by strikng out "and peanuts" in section 101(b); and

(2) by striking out "peanuts," in section 408(c).

PRICE SUPPORT FOR PEANUTS

SEC. 702. Effective beginning with the 1982 crop of peanuts, section 201 of the Agricultural Act of 1949 (7 U.S.C. 146) is amended—

(1) by inserting "peanuts," after "honey," in the language preceding subsection (b); and

(2) by adding at the end thereof a new subsection (g) as follows:

"(g) the price of the 1982 and subsequent crops of peanuts shall be supported at such level as the Secretary considers appropriate, taking into consideration the eight factors specified in section 401(b) of this Act, the cost of production, any change in the index of prices paid by farmers for production items, interest, taxes, and wage rates during the period beginning January 1 and ending December 31 of the calendar year immediately preceding the crop year for which the level of support is being determined, the demand for peanut oil and meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets, but not less than $ per ton.".

On page 212, line 7, insert ", as amended by section 702," before "is amended".

On page 212, line 12, strike out "(g)" and insert in lieu thereof "(h)".

On page 213, line 23, insert ", as amended by section 702," before "is".

On page 214, line 6, strike out "(h)" and insert in lieu thereof "(i)".●

OMNIBUS RECONCILIATION ACT OF 1981

AMENDMENT NO. 100

(Ordered to be printed and to lie on the table.)

Mr. MOYNIHAN (for himself, Mr. CRANSTON, Mr. BRADLEY, and Mr. BOREN) submitted an amendment intended to be proposed by them to the bill (S. 1377) to provide for reconciliation pursuant to title III of the first concurrent resolution on the budget for fiscal year 1982 (H. Con. Res. 115, 97th Congress).

NOTICES OF HEARINGS

SUBCOMMITTEE ON THE CONSTITUTION

Mr. HATCH. Mr. President, I would like to announce that the Subcommittee on the Constitution, of which I am chairman, will hold public hearings to examine the Freedom of Information Act and proposed legislation to amend the act. The first two hearings will be held on July 15, 1981 at 9:30 a.m. and July 22, 1981 at 9:30 a.m. in room 2228 Dirksen Senate Office Building.

The Freedom of Information Act, first passed in 1966 and amended in 1974, has done much to promote public confidence in government. Nevertheless, a number of problems have threatened to undermine the benefits of FOIA. For instance, some legitimate law enforcement and intelligence activities have been impaired. Individuals and businesses cannot adequately protect their trade secrets from unfair disclosure to competitors. And the administrative burden of time and money has been much greater than ever anticipated when the bill and its amendments were passed.

Several bills addressing these problems have been referred to the Subcommittee on the Constitution. Senator DOLE has introduced S. 1247 to help submitters of information to government agencies protect their business secrets from disclosure. Senator D'AMATO has introduced S. 1235 to add certain exemptions for classified CIA files. And I have introduced S. 587 which will provide exemptions for law enforcement agencies for information such as personnel rosters, and confidential investigative techniques. In addition, this bill deals with a number of administrative prob-

lems arising out of the Freedom of Information Act.

The hearings will afford a comprehensive overview of the act, and will not be limited in scope to the bills that have been mentioned. The subcommittee expects to receive additional recommendations concerning the act.

Individuals and organizations interested in presenting oral testimony at the hearing should submit their request to be heard by telephone, to be followed by a formal written request to Randall R. Rader, counsel, Subcommittee on the Constitution, 108 Russell Senate Office Building, Washington, D.C. 20510; telephone (202) 224-4906. The initial telephone request must be received by the subcommittee not later than the close of business June 30, 1981. Notification to those scheduled to appear will be made by telephone as soon as possible after the filing deadline. For those who wish to file a written statement for inclusion in the printed record, five copies must be submitted by the close of business, September 4, 1981.

SUBCOMMITTEE ON FEDERAL EXPENDITURES, RESEARCH, AND RULES

Mr. DANFORTH. Mr. President, on July 2, 1981, the Subcommittee on Federal Expenditures, Research and Rules of the Committee on Governmental Affairs will hold a field hearing in Kansas City, Mo., to identify problems which Federal contractors encounter in doing business with the Federal Government. The hearing will be held in the chambers of the Jackson County Legislature on the second floor of the Jackson County Courthouse and will begin at 9 a.m.

The following witnesses will testify at that hearing:

WITNESSES

CONSTRUCTION INDUSTRY

Mr. William Dunn, Sr., President and Chairman of the Board, J. E. Dunn Construction Company; Chairman, Minority Business Advisory Council, Kansas City Area HUD Office; First Vice President, Associated General Contractors, Kansas City Chapter.

Mr. Charles Garney, President, Garney Companies, Incorporated; President, The Heavy Constructors Association of The Greater Kansas City Area.

Mr. Bruce Patty, Partner, Patty Berkebile Nelson Associates Architects, Incorporated; Regional Director, Central States, American Institute of Architects.

STEEL AND ELECTRONICS INDUSTRIES

Mr. Robert Zimmerman, Vice President for Marketing, Wilson Electric, Incorporated.

A representative from Armco, Incorporated.

SMALL BUSINESS

Mr. James Brettell, Executive Vice President, Libby Corporation.

Mr. Donald J. Loeb, President, Rite-Made Paper Converters, Inc.

Mr. Eric Dunkley, President, Eric's Foods, Incorporated.

SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

Mr. DURENBERGER. Mr. President, I would like to announce that the Subcommittee on Intergovernmental Relations of the Governmental Affairs Committee has scheduled a hearing on S. 1042, a bill to amend the Intergovernmental Personnel Act of 1970 as amended. The hearing will be conducted at 2 p.m. in room 3302 Dirksen Senate Office Building on June 24, 1981. Those wishing to submit written statements to be included in the printed record of the hearing should send five copies to Ruth M. Doerflein, clerk, Subcommittee on Intergovernmental Relations, room 507 Carroll Arms Building, Washington, D.C. 20510.

For further information on the hearing, you may contact Susan Fritschler of the subcommittee staff at 224-4718.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON ENVIRONMENTAL POLLUTION

Mr. BAKER. Mr. President, I ask unanimous consent that the Subcommittee on Envionmental Pollution of the Committee on Environment and Public Works be authorized to meet during the session of the Senate on Monday, June 22, at 2 p.m. to hold a hearing on clean water legislation.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. BAKER. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate today, June 22, to hold nomination hearings on Eugene V. Rostow to be Director of ACDA.

The PRESIDING OFFICER. Without objection, it is so ordered.

ADDITIONAL STATEMENTS

THE INFLUENCE OF THE U.S. CONSTITUTION ABROAD

● Mr. HATCH. Mr. President, the Subcommittee on the Constitution of the Judiciary Committee, of which I have the honor to serve as chairman, has been involved in preliminary planning for the 200th anniversary of the U.S. Constitution in 1987. A major part of this commemoration of our bicentennial is a study of the influence of this, the world's oldest constitution, on the constitutions of the other 157 nations of the world. I am pleased to report to you on the progress of this important mission.

The project's findings will be published ad seriatum in journals and reviews throughout the world from 1983 to 1986, and will be combined into several major commemorative volumes in 1987. These studies will also be the basis for the summary analytic volume to be prepared by Albert P. Blaustein, professor of law, and Jay A. Sigler, professor of political science, both of Rutgers University.

More than 75 scholars from more than 50 countries have already joined editors Blaustein and Sigler in this project. Professor Blaustein is coeditor of the 15-volume work "Constitutions of the Countries of the World" and its companion six-volume work, "Constitutions of Dependencies and Special Sovereignties," as well as the author of "The American Lawyer," "Desegregation and the Law," and "Civil Rights and the Black American." Professor Sigler's works include "The Legal Sources of Public Policy: American Rights Policies," and "Contemporary American Government." Professors Blaustein and Sigler have also coedited "Independence Documents of the Nations of the World," published in 1977 to commemorate the bicentennial of our Declaration of Independence.

Professor Blaustein was a consultant in the preparation of the Bangladesh Constitution of 1972 and the Peruvian Constitution of 1978. He was special counsel to Prime Minister Abel T. Muzorewa at Lancaster House in 1979 in preparation of the new Zimbabwe Constitution.

WORLD-WIDE SCHOLARS

Many of the scholars who have joined this project also participated in drafting the constitutions of their own countries. They include Kamal Hossain (Bangladesh), former minister of law and chief architect of the Bangladesh Constitution; Julian Santa Maria (Spain), who played such an important part in drafting the new Spanish Constitution; Joseph Cooray (Sri Lanka) who later became a justice of the Sri Lanka Constitutional Court; Domingo Garcia-Belaunde (Peru), S. O. Gyandoh, Jr. (Ghana), D. J. Murray (Kiribati) and D. I. O. Eweluka (Nigeria) among others. Isi Foighel (Denmark), who chaired the drafting of the Greenland Constitution, will write on his native Denmark.

Among the high-ranking legal dignitaries are Chief Justice Enrique M. Fernando, the scholarly leader of the Philippines' Supreme Court; Venezuela Minister of Justice Guillermo Andueza; Thailand's Minister of Justice Marut Bunnag; Sudan's ex-Attorney General Zaki Mustafa; Japan's Supreme Court Justice Massami Ito; Nepal's Secretary of the Ministry of Law and Justice Dhruba Bar Singh Thapa, and W. S. Plavsic of the Prime Minister's Office in Belgium.

Because of the special relationship between the U.S. Constitution and France's constitutional history, the final French Study will be written in five parts. Three outstanding scholars have already agreed to participate. Jacques Godechot will cover the period of the French Revolution and Napoleon I (1789) to 1815); Odile Rudelle will write on the Third Republic (1871 to 1946), and Judge Jean-Luis Debre will write on the Fifth Republic (1958 to present). Scholars are still being sought for the period between Napoleon I and Napoleon III and for the post-World War II constitution of the Fourth Republic.

The German study, which will trace the influence of the American Constitution in the early German states, including Brandenburg, Wurttemberg and Bavaria, as well as the unified German will be prepared by a team of German and American scholars headed by Notre Dame Law Professor Donald P. Kommers.

Other outstanding scholars include:

John W Poulos (Afghanistan). University of California at Davis; Jorge R. A. Vanossi (Argentina), University of Buenos Aires; Alex C. Castles (Australia), ex-dean University of Adelaide Law School; Felix Ermacora (Austria). University of Vienna, a member of the

United Nations Human Rights Committee; Amir Ul-Islan (Bangladesh), an outstanding practitioner; J. Vanderlinden (Belgium, Zaire), Free University of Brussels; Leo E. Rose (Bhutan), University of California at Berkeley; Ahmad Ibrahim (Brunei, Malaysia, dean of the University of Malaya Law School; Bill Ramsden (Botswana, Lesotho, Swaiziland), University of the West Cape, South Africa; David Steinberg (Burma), legal counsel, U.S. AID, and Filip Reyntjens (Burundi, Rwanda), University of Antwerp.

Clare F. Beckton (Canada), Dalhousie University; M. Necati Munir Ertekun (Cyprus), president's office, Cyprus; James C. N. Paul (Ethiopia), founding dean, University of Addis Abbaba, now at Rutgers; Dr. Renaldo Galindo Pohl (Ecuador); Michel Ajami (Gabon), National University of Omar Bonga; Upendra Baxi (India), former dean, University of New Delhi; S. N. Jain (India), director, Indian Law Institute; Changiz Z. Vafai (Iran), now with Columbia University School of International Affairs; Amos Shapira (Israel) University of Tel Aviv; Giovanni Bognetti (Italy), University of Pavia, and Lawrence W. Beer (Japan), University of Colorado.

H. W. Okoth-Ogendo and Kivutha Kibwana (Kenya), University of Kenya; A. Peter Mutharika (Malawi), Washington University, St. Louis; M. P. Jain, 2d, Asmi B. Abdul Khalid (Malaysia), University of Malaya; John G. Hangin (Mongolia), Indiana University; Ger. F. M. Van Der Tang (Netherlands), Erasmus University; Roger S. Clark (New Zealand), Rutgers University; Rafi Raza (Pakistan), a former minister; Leslie Wolf-Phillips (Pakistan), London School of Economics and Political Science; Waclaw Szyszkowski (Poland), University of Mokolaja Koperniku W. Toruniu, and Marcelo Rubelo de Sousa (Portugal), University of Lisbon.

S. Jayakumar (Singapore), University of Singapore; W. S. Marcus Jones (Sierra Leone), University of Fourah Bay; Martin R. Ganzglass (Somalia), now a Washington, D. C. attorney; Mohamud Ali Turyare (Somalia), attorney; Ellison Kahn (South Africa), former dean of law, University of Witswaterrand; F. E. M. Mitrasing (Suriname), University of Suriname; Amibal Luis Barbagelata (Uruguay), University of Uruguay; John N. Hazard (U.S.S.R.), Columbia University; Douglas Pike (Viet Nam), legal adviser, U.S. State Department; Smiljko Sokol (Yugoslavia), University of Zagreb; L. S. Zimba (Zambia), University of Zambia, and G. R. J. Hackwill (Zimbabwe), University of Zimbabwe.

I now want to call to the attention of my colleagues a summary of this important project.

THE INFLUENCE OF THE UNITED STATES CONSTITUTION ABROAD

Scholarly studies and public celebrations are planned for the commemoration of the 200th anniversary of the U.S. Constitution, drafted in 1787 and ratified in 1789. For this has been the most successful constitution in the history of the world and its bicentennial is an occasion for worldwide recognition.

While most of the studies will be directed toward the impact of the Constitution upon the American people, there is an international role which likewise demands study.

For this was the first single-document constitution, and it is by far the longest lived. The whole world has looked to the U.S. experience as a possible precedent to be considered in each country's own constitution-making.

There is a desire and need to examine and report on the ways in which the U.S. constitutional guidelines were accepted, adopted, adapted, avoided, and abjured during the two centuries past. By studying and analyzing the U.S. model in a multiplicity of foreign contexts we will inevitably gain greater insights into the meaning of our Constitution and its continuing viability. And the explanation of how the U.S. Constitution influenced the other constitutions of the world should contribute to its continuing influence.

PLANNED PUBLICATIONS

There will be two final publications: First, a one-volume, 500–600 pages, comprehensive study, publication date: Fall 1986; and second, a two-volume, 1,500–2,000 pages, library reference documentary, collecting the nation-by-nation analyses which will form the research background for the study, publication date: Fall 1987.

The country-by-country analyses will be published ad seriatum as completed in scholarly reviews devoted to law, history, and political science.

THE PROJECT

Objective scholarship is the one indispensable guidepost for this project. This will not be a public relations exercise in American aggrandizement.

But scholarship must not neglect the fact that the making of a constitution is one of the most critical events in nationhood. And the drama must not be lost in the footnoting.

Nor can the students of the influence of the U.S. Constitution limit their thinking to the spread of democratic ideals which had their first successful flowering in this country. The very concept of a single-document constitution is peculiarly American. And on the eve of the 200th anniversary of the U.S. Constitution, only 6 of the world's 165 nations are without such a charter: the United Kingdom, Canada, New Zealand, Israel, Oman, and Saudi Arabia.

Even in the totalitarian states—even in the nations which totally deny their citizens any real individual freedoms—there is often a U.S. influence. This influence is manifested in institutional and structural contributions: The concept of federalism, a presidential system, an electoral college, or a separate national judiciary appointed by the President with the approval of a parliamentary upper chamber.

The studies will not be speculative; they will be grounded upon hard data. Since the past two decades have constituted an unparalleled era of constitution making, many of the draftsmen are still alive, and their experiences will provide a priceless source of information in the preparation of the monographs.

The monographs will include consideration of:

First, misapplication and misunderstandings about the U.S. model;

Second, competition between the U.S. model and other models;

Third, successes and failures in the application of the U.S. models; and

Fourth, application of the U.S. model in actual practice as well as theory. Specifically, thought will be given to the following:

First, the U.S. Constitution as a symbol;

Second, the borrowed concept of "constitution workshop";

Third, the idea of a single-document constitution;

Fourth, the separation of powers;

Fifth, checks and balances;

Sixth, American-style federalism;

Seventh, bicameralism;

Eighth, enumerated legislative powers;

Ninth, the electoral college;

Tenth, the presidential system;

Eleventh, the amending process;

Twelfth, judicial review;

Thirteenth, the idea of a bill of rights; and

Fourteenth, specific bill of rights safeguards and prohibitions.

I will be looking forward to the progress of this important project in the months and years ahead.●

LONG-TERM HEALTH CARE

● Mr. COCHRAN. Mr. President, rising health care costs continue to be a very serious problem, especially for older citizens who require long-term care in nursing homes.

Federal programs should be reviewed very carefully by Congress to insure that the costs are reduced as much as possible and that those who must have Government assistance to meet essential health care needs are not neglected.

Mr. J. Donald Jernigan, senior vice president of Mediplex, Inc., has written a paper calling for more effective cooperation in this effort between Government and industry. His ideas deserve the careful consideration of Congress as we work to improve our response to citizen needs for long-term health care.

I ask that a copy of "Care for the Aged and Infirm—Where Do We Go From Here?" be printed in the RECORD.

The material follows:

CARE FOR THE AGED AND INFIRM—WHERE DO WE GO FROM HERE?

America is the greatest nation on the face of the earth! We have been and are a nation which can solve the various problems with which we are confronted from the invention of the colt revolver to replace the one-shot musket to the blast off from Cape Canaveral of "Columbia".

We have been a nation of new people, new ideas, new things, new development to conquer the frontiers which loom upon the horizon. We have emphasized these new things in a culture of our own development which has emphasized youth over maturity, the tangible over the intangible, the passing over the permanent. One illustration should suffice: The American Automobile. Henry Ford made one basic mistake in that he made a car that would last. In fact, it lasted so well that the market for cars did not develop until someone got the idea that cars should

not be made to last and the designs should be changed as often as possible to enhance the market. It is interesting to note that new, 1964 Ford Falcons are still being made in Argentina!

In our generation we have witnessed a changing America. Our frontiers have been conquered; our resources are being depleted; our factories have grown old; our air and water have been contaminated and we are growing old. Old, yes, a greying America. This has been brought about through research in medicine with dedicated doctors, scientists, nurses, technicians, etc. who have pledged themselves to one goal: The preservation of life. This has created havoc with the social security system since people were supposed to retire at 65 and die soon thereafter.

The Nursing Home Industry has been no less dramatic! In 1962 the writer was commissioned to design his first Nursing Home project in Florence, Alabama.

This project was an 80-bed facility since 40-beds constituted a "nursing unit" at that time. This was later changed to 50 beds per nursing unit and in some cases the only restricting factor is to be within a certain distance of the nurses station. Shortly after completing this project it became evident that a need for additional beds existed. However, it was thought that the need would begin to decline within 5 years or so. Such has not been the case. Instead there has continued to be a growing need which has escalated at an alarming rate.

Since the writer's main area of experience has been in the State of Alabama, it will be referred to as a typical basis for remarks. However, it should be pointed out that all States have similar laws and policies.

In 1955, Alabama passed the Medical Clinic Act which provided for municipal-type, tax-free bonds to provide for the financing of medical facilities which included Nursing Homes. Most States have similar laws. This provided for the resources to build the facility.

Developers, including the writer and his associates began to seek out areas where a real need existed checking with the city officials and the local Department of Pensions and Security (welfare recipients). This was before the day that a "Certificate of Need" law was in effect. There was no difficulty in over-bedding since the various developers simply stayed clear of each other in a given area.

This was also before the day of Medicaid with all of its accompanying governmental regulations and "red tape". And, it should be noted that quality care was given at a flat-rate of $275.00 per month! It should also be noted that Family Supplementation was an integral part of the reimbursement program not only utilizing patient resources with government assistance but also having a certain portion of the cost paid by the family of the patient which is only natural and proper and should have never been terminated by HEW.

Lo! and behold!, the Federal Government through the Department of Health, Education, and Welfare came riding upon the scene on a white horse: enter Medicaid. This occurred somewhat around 1970 and the various States then jumped on behind the saddle, holding on for dear life and donned a white hat singing the praises of this "manna from Heaven."

With the coming of the "Certificate of Need" law the States became party to, if not solely responsible for not only "restricting" over-bedding but actually "fostering" and encouraging the building of additional beds by certifving that additional beds were needed. This was often done disregarding the true need in a given area by relying solely on a preconceived statistical formula. Cases may be cited where several nursing homes in a certain area all had some empty beds and most, if not all, were losing money and since a "cost basis" was used for determining the per diem reimbursement rate, it is obvious that Medicaid was not being maximized to reach the greatest number of people.

For many years, nursing homes in Alabama had one level of care which was generally referred to as "Skilled" and even with the coming of Medicaid there was still the element of family supplementation. At this time the total cost per month for a nursing home patient was around $450.00 which was generally paid as follows:

Personal Resources	$100–150
Family Supplementation	100–150
Medicaid balance	200
	450

It is easy to see that the cost of the Medicaid program was well under control, especially in view of the fact that some 70–80 percent of the funds were Federal with 20–30 percent furnished by the State.

Several restrictive and costly factors were introduced by various governmental agencies which have continued to escalate the costs of Medicaid along with the continued increase of the minimum wage, increasing utility costs, increasing food costs, etc.

To name a few of the restrictive and costly factors, the following general areas will be dealt with in detail following their enumeration:

1. Life Safety Code Requirements.
2. Elimination of Family Supplementation.
3. Licensing of Nursing Home Administrators.
4. De-certification of Skilled to Intermediate.
5. Income Ceiling to Qualify for Medicaid.
6. Influx of Mental Health Patients.

1. Life Safety Code Requirements. We all agree that the elderly should be in a safe, clean environment. We all know that the old "rest home" of 30 years ago, which were two-story converted homes for the most part, were fire-traps and had to be eliminated but to require the multitudinous changes to the physical plant, some of which were preposterous served one ultimate purpose: The Medicaid rate was increased.

2. Elimination of Family Supplementation. This was the grandiose scheme of the HEW "do-gooders" to supplant the average nursing home resident who had a family sponsor paying part of the cost with lower income people, both white and black who had very little, if any personal and family resources; thus putting the entire cost on the back of Medicaid. By this time, with inflation, increase of minimum wage and extensive life safety code work, the average monthly rate was around $650.00 which looked something like this:

Personal Resources	$150
Family Supplementation	0
Medicaid	500
	650

Even a grade-school student can see the dramatic change in the cost of the Medicaid program.

3. Licensing of Nursing Home Administrators. While we in the nursing home field have no real argument against the licensing requirement for nursing home administrators, it is strange indeed that hospital administrators have no such requirement. Now, some States are moving toward increasing the requirements for licensing which basically does one thing: increase the cost of Medicaid. At one point in time (somewhere around 1965) some nursing home administrators were actually being paid less than the directors of nurses with some salaries as low as $550.00 per month, or around $6,000.00 to $7,000.00 annually. In contrast with this now, in order to secure and keep the services of a qualified, licensed nursing home administrator the salary range is from $16,000.000 to $20,000.000 annually or roughly triple the cost of 1965. Shove Medicaid up one more notch.

4. De-Certification of Skilled to Intermediate. But you inquire "How could this possibly increase the cost of Medicaid?" By increasing the number of beds available! The States have varied levels of care and in Florida for example, there are three basic levels of care: Skilled, Intermediate I and Intermediate II. Alabama chose to have two: Skilled and Intermediate. When Intermediate care came upon the scene there was a deliberate and systematic "De-Certification" of some 3,000 Skilled patients in Alabama, simply to comply with an arbitrary goal of some bureaucrat. Initially this was intended to "save money" by paying less for Intermediate Care and by paying this "out of another pocket" but in due time it simply came back under the umbrella of Medicaid with additional beds being built to care for the State-Certified increasing Intermediate Care level of need.

5. Income Ceiling to Qualify for Medicaid. This was an imposed requirement by the State of Alabama, which not only disenfranchises the middle-class "backbone" of our society, but also increases the cost of Medicaid in Alabama. It works like this: By arbitrary decree, if one has worked hard all of his life, paid his taxes and has been a good citizen and has, for example, a monthly retirement from all sources of "X" number of dollar (has ranged from $258.00 in 1975 to $421.00 at present) he or she is actually ineligible for Medicaid in Alabama. This means that the hard-working, honest, decent middle-class American who may need nursing home care cannot receive it unless his family, friends or church pay the monthly difference. In contrast to the arbitrary disenfranchisement of Alabama citizens, Tennessee makes no limiting restriction but takes any amount of personal resources and supplements the difference which is only fair, equitable and democratic alternative. But you ask, "How does this cost the Medicaid program more?" Very simply this: It is safe to assume that those disenfranchised Alabama citizens are cared for in the home using their limited resources to pay for a live-in practical nurse, while the nursing homes are filled with those who have little or nothing. I would certainly not advocate "throwing out" anyone by totally eliminating the Intermediate Care Program which the States have created but I would suggest that the law of "Supply and Demand", if it had not been tampered with by some bureaucrat would have resulted in one-half of nursing home patients being below the State-imposed ceiling to qualify for Medicaid and one-half being above the ceiling. Let us make a few assumptions as follows:

1. Assume 10,000 Medicaid Nursing Home Patients in the State of Alabama.

2. Assume the average cost of $750.00 per month.

With these assumptions, let us consider two situations; one with all patients below the State-imposed ceiling and one with only one-half below the ceiling and the other one-half above this ceiling.

Situation I (All patients below the ceiling):

10,000 Medicaid at $750.00/month	$7,500,000
Personal Resources at $150.00/month	1,500,000
Medicaid costs	6,000,000

Situation II (Half below and half above ceiling):

½ Below Resources at $150.00	750,000
½ Above Resources at $500.00	2,500,000
Medicaid costs	4,250,000

Thus, the Medicaid Program for Nursing Home Care in the State of Alabama would cost $1,750,000.00 less per month simply by reinstating the disenfranchised citizen. It is safe to assume a time factor to accomplish this but it would be a gradual step in the right direction. Of course, you may make your own calculations as to the exact amount of the State portion of this savings.

6. Influx of Mental Health Patients. When the Federal court ordered that Bryce and other State institutions remove certain type of residents who could be transferred to nursing homes, the nursing home industry "opened their arms" to cooperate with the State in a critical situation and proceeded to make additional beds available as required realizing that the cost of caring for a nursing home patient was less that half the cost in the State-operated institution. This was done with the thanks and blessings of the State. But, again, obviously, the cost of the Medicaid Program had to go up as Mental Health was intended to come down.

Over the past few years numerous attempts have been made to relay findings and recommendations to State officials as follows: A written report of the Medicaid dilemma was hand carried to the Governor in 1975 which stated some of the problems and trends in the nursing home field with several suggested remedies, among which were: (a) A moratorium on building additional beds until the problem of permanent and adequate funds was resolved; (b) A reinstatement of the disenfranchised Alabama citizen who happened to come above an arbitrary figure to qualify for Mediciad; and (c) Work to have HEW restore family supplementation. To this date no changes have been made.

Most States have had problems with Medicaid funding over the years in spite of the fact that from 60–80 percent is being paid by the Federal Government. Now, with the stated purpose of President Reagan's Administration to cut back on costs in order to keep our Ship of State afloat, it is obvious that the Nursing Home Industry must expect their share of limited spending. With the stated purpose of putting a "cap" on the Federal portion of Medicaid it becomes obvious that a greater percentage of the costs must be borne by the States even if "Zero" new beds were built. And yet, the States continue to Certify that new beds are needed. Unbelievable!

It is obvious that we cannot stick our heads in the sand and expect the problem to go away! If we are to solve the problem which we are perfectly capable of doing as a nation, it will require the concerted effort and cooperation of the Federal Government, the State Governments and the Nursing Home Industry.

First of all, let us consider the facts which are before us:

Fact No. 1: We have a Greying America. Each day that passes 4,000 people in the U.S. reach the age of 65. Each day that passes, 3,000 people in the U.S. over the age of 65 die, thus we are netting an increase of 1,000 per day!

Fact No. 2: Limited Personal Resources. Most nursing home patients have very limited resources available to help with their care.

Fact No. 3: Limited Medicaid Eligibility. As hereinbefore stated. (In Alabama)

Fact No. 4: No Family Supplementation Permitted. This was phased out by HEW.

Fact No. 5: No Funding for Lower Level Care. Custodial Care which will be addressed in possible solutions to the problem.

Fact No. 6: Present State Funding Problems. A constant recurring problem with some States talking about elimination of ICF beds (which they have certified to be needed) or with some States applying an illegal percentage of Medicaid patients in a given facility.

Fact No. 7: Federal CAP on Medicaid. Plan as stated by Reagan Administration.

Fact No. 8: Resultant Increased State Deficits. All rising costs borne by the States.

Fact No. 9: Continued Increase in Number of Beds. States continue to issue Certificates of Need which escalates Medicaid costs.

Fact No. 10: A Projected Collapse of the Industry. Unless Facts No. 1 thru No. 9 are properly addressed immediately the entire industry could collapse within two years.

The situation which confronts the Nursing Home Industry is not a pleasant one but of greater concern and consequence is the problem with what to do with the growing multitudes in Greying America. One thing for certain is that America is not going to put the elderly and the infirm "out into the street". Therefore, we must find ways and means to solve the problem and we must act decisively and with all haste. It will require the cooperation of Federal, State and Industry officials to address the problems with all of the attendant ramifications.

While all the answers may not be readily apparent, it is believed that the proposals which follow could be a partial solution.

Asterisks denote:

*Federal Legislation Necessary.

**State Legislation Necessary.

A proposed pathway out of the wilderness:

Step No. 1: Limit the Growth of High-Cost Beds.

* **Immediately cease to issue any Certificates of Need for whatever reason. An immediate moratorium, if you please. Revoke any and all outstanding Con's that have not been fully implemented, meaning specifically unless permanent mortgage funds have been secured and at least $100,000.00 spent. In Mississippi alone, the number of beds increased from 10,659 in 1977 to 13,413 in 1979 or approximately 25 percent, or 12½ percent each year. This cannot continue with a concurrent solvency of the Federal and State Governments.

Step No. 2: Provide Funding for a Lower Level of Care.

*Custodial Care specifically which is nonnursing home care. The Physical plant could be much less costly. The charges for this level of care should be approximately one-half the cost of Nursing Home care. Patients who might need some nursing oversight could be attended to by a Home Health Care Nurse.

Step No. 3: Nursing Home Bed Needs Met by Resultant Vacancy.

As patients are transferred from existing Nursing Homes to a lower level of care, the resulting vacancies will provide for the growing needs for the Nursing Home care without building new more expensive beds. Thus, the growth which seems to be inevitable can be at one-half the cost to the Medicaid Program.

Step No. 4: Multiple Use of Existing Facilities.

*** Some States require a "Distinct Part" for Medicare and Medicaid Skilled Patients while others permit "Dual Certification" but in no case can any part of the building be used for purposes other than Nursing Care. Suppose, for example, that a portion of an existing facility could be used for custodial patients while the remaining portion(s) could be used for SNF and/or ICF patients. If this were permitted, it would be possible to fill all facilities which would lower the per diem.

Step No. 5: No Limit on Medicaid Eligibility.

**Make all Americans eligible for Nursing Home Care under Medicaid. For those in Alabama for example who have some $500.00 per month who cannot now qualify, use that $500.00 to help pay the $900.00 to $1,000.00 monthly cost.

Step No. 6: Restore Family Supplementation.

*** Families who can pay should pay a portion of the cost of care for their relatives. It could be related to a percentage of the cost such as 25 percent for example. If the total charges per month are $900.00, then the family portion would be $225.00.

Step No. 7: Nursing Home Care Insurance.

Encourage Insurance Companies to design plans for supplemental coverage as determined actuarily. Several plans could be made available to provide ¼, ½ of full coverage as subscribed. This could be the long-range plan to keep Medicaid afloat in the years ahead.

Step No. 8: Actuarial Studies.

With the facts presented on a Greying American, it is time that actuarial studies be made to determine among other things, the following:

(a) What are the projected numbers of elderly who will need Nursing Home Care each year for the next 20 years considering the expected attrition?

(b) Are patient resources expected to increase, decrease or remain fairly constant? This could have a significant impact on the future.

The following table of assumptions should give some food for thought:

Table No. 1—New Nursing Home Beds—1982:

Assume 50,000 new Medicaid Nursing Home Beds in the U.S.

Assume a total cost of only $30.00 per day.

The total additional cost for 1982 will be $547,500,000.

Assume present average Patient Resources of $200/Month.

Assume that this could be increased to $300/Month.

Assume Family Supplementation of $225/Month.

Present situation:

50,000 × 30 × 365	$547, 500, 000
Patient Resources	120, 000, 000
Total Medicaid Cost	427, 500, 000

Possible situation:

50,000 × 30 × 365	$547, 500, 000
Patient Resources	182, 500, 000
Family Supplementation	135, 000, 000
	317, 500, 000
Total Medicaid Cost	230, 000, 000

A possible savings of $197,500,000 per year! However, it should be remembered that the increased cost to medicaid is what is addressed in this table.

Table No. 2—Total Nursing Home Beds—1982:

According to information from the National Center for Health Statistics there were 1,383,600 Nursing Home patients in the U.S. in 1977. If the increase in the number of Nursing Home beds in Mississsippi from 1977 to 1979 is typical for the nation at 12 percent ± per year we may make the following assumptions:

Total Nursing Home Beds in the U.S. 1977, 1,383,600.

Total Nursing Home Beds in the U.S. 1978, 1,549,632.

Total Nursing Home Beds in the U.S. 1979, 1,735,588.

Total Nursing Home Beds in the U.S. 1980, 1,943,858.

Assume a present total of beds, 2,000,000.

Assume 60 percent Medicaid Beds, 1,200,000.

Assume $30/Day × 12,000,000 × 365 = $13,140,000,000.

Average Federal Medical Assistance percent = 60.1474 (say 60%).

Average State Medical Assistance percent = 40 percent.

Assume 20 percent could be Custodial = 240,000.

Present situation "A":

	In billions
1,200,000 Medicaid × 30 × 365	$13, 140
Patient Resources (at 200/Month)	2, 880
Total Medicaid cost	10, 260
60 percent FMAP	6, 157
40 percent SMAP	4, 104

Situation "B"—Restore family supplementation:

	$10,260
225 x 12 x 1,200,000	3,240
Total Medicaid cost	7,020
60 percent FMAP	4,212
40 percent SMAP	2,808

Situation "C"—20 percent custodial:

	7,020
240,500 x 15 x 365 (Amount saved)	1,314
Total Medicaid cost	5,706
60 percent FMAP	3,424
40 percent SMAP	2,282

By utilizing restored family supplementation and providing for custodial care the total medicaid dollars could be reduced by 4.5 billion dollars annually which would translate into the following:

FMAP (Federal)—2.7 Billion Savings.

SMAP (State)—1.8 Billion Savings.

Needless to say, this would allow for an annual growth of 12 percent in Nursing Home beds for several years before ever reaching the present "cap" as proposed.

CONCLUSION

It is obvious that we are faced with following alternatives:

1. Continue the impossible spiral in costs which will require increasing taxes, Federal and State.

2. Close all existing facilities and move the patients into the street.

3. A cooperative plan by Federal, State and Industry to equitably meet the needs of the Greying Americans.

The Federal and State Governments have gone on record as being opposed to Item 1.

The American conscience will not even entertain the consideration of Item 2.

It is evident that we really have only one alternative. We must immediately pursue every possible avenue to:

1. Analyze where we are.

2. Project where we are going.

3. Design a multi-faceted Health Care delivery system.

4. Change or modify laws both Federal and State to accomplish the desired ends.●

TRIBUTE TO ROBERT STRANGE McNAMARA

● Mr. SARBANES. Mr. President, when Robert S. McNamara steps down at the end of this month as President of the World Bank, his 13 years of service and leadership at that important institution leading the way for economic development will come to an end, but the public service of Robert McNamara will endure.

In every activity he has undertaken Mr. McNamara has been a dynamic force for leadership and public service. Bob McNamara is a dedicated public servant, taking on and excelling in the most demanding assignments. In an interview published in yesterday's New York Times, Mr. McNamara reaffirmed his commitment in these words:

I am willing to do anything that will be of assistance to either our government or other governments. I do believe in public service. I am interested in it, excited about it.

Whatever Bob McNamara undertakes, I am certain his leadership will exert a profound beneficial influence, for he is a true leader. Again his own words are most appropriate:

I see my position as being that of a leader. I am here to originate, to stimulate new ideas and programs. You've got to do things differently or else you're not improving them.

During his tenure the World Bank has enjoyed the most exciting, pioneering period of its history, thanks to Bob McNamara's dynamism. In his statement at the time of his resignation, Mr. McNamara noted that—

The World Bank has become by far the world's largest and most influential international development institution . . . responsible for providing economic advice and financial assistance to 100 developing countries with a combined total population of some 3.5 million people.

Perhaps of even greater significance than the growth measured in numerical terms was a change in emphasis from "economic programmes and investments directed simply towards maximising the rate of overall economic growth, to programmes and investments directed towards achieving that growth with equity." To meet these important goals Bob McNamara has guided the World Bank providing material assistance from the more subtle aspects of development such as education, public health, and rural development.

This focus of resources and technical assistance on the poor, raising their productivity and hence their output and real income will perhaps stand as one of Bob McNamara's most enduring contributions. The discovery that the resources of the Bank could be directed toward helping the poor and society simultaneously, is indeed his greatest accomplishment.

Bob McNamara will continue to serve as an adviser and board member to some of our most important institutions. I know we will all continue to benefit from his advice and counsel in the years ahead.●

GI BILL OF 1981

● Mr. ARMSTRONG. Mr. President, in this time of economic crisis at home, and rising tension abroad, we no longer can afford to ignore a simple, practical, proven measure which will save us money while it strengthens our defense.

President Reagan is prepared to go to historic and heroic lengths in his efforts to slow inflation and to get our economy growing again. The cutbacks he has proposed in domestic Federal spending are unprecedented in postwar American history. Already, the wails of anguished special interest groups are being heard throughout the land.

The President also is striving manfully to rebuild our shattered defenses in the face of an ominously growing Soviet threat. He has announced plans to spend the mind boggling sum of $1.2 trillion on defense—more than the United States has spent on defense from the birth of our Republic through the Korean war—in the next 5 years alone.

Few doubt the need for a defense buildup approaching the magnitude the President has proposed, but many fear we can not spend so much on defense in so short a time without catastrophic consequence for the President's plans for fighting inflation and stimulating economic growth.

Our defense needs are legion: We are building new fighter aircraft at a rate below the rate at which older aircraft are being retired from service; our Navy has shrunk by a third at a time when its commitments have grown; the Soviet Union has four times as many tanks as we have, and is producing new tanks at a faster rate then we are.

But our most critical defense need—overshadowing all the others—is for more and better military manpower. History has shown us time and time again that good people can get a lot of mileage out of inferior equipment. But all the military hardware in the world is only so much icing on a hot cake without the right numbers of the right kind of men and women to operate it.

The President has shown his appreciation of the primacy of the military manpower problem by giving his enthusiastic support to a substantial increase in pay and benefits for our career servicemen and women, especially our long-suffering noncommissioned officers (NCO's).

This pay increase will be expensive—about $4.2 billion in the next fiscal year—but is absolutely essential if we are to retain the servicemen with the special skills and experience required to operate the sophisticated equipment we have become increasingly dependent upon.

The proposed October pay raise largely will resolve the problem of retention, which has been the lion's share of the military manpower problem. But there will remain, especially in the Army, the increasingly serious problem of recruitment.

This is more a problem of recruit quality than it is of quantity. We are obtaining enough volunteers to maintain authorized peacetime strengths. The problem is that many of these volunteers have neither the aptitude nor the attitude required to properly perform their military duties.

Equally ominous for the Armed Forces of a democracy is the increasing disparity in the sociological mix of the enlisted grades from society as a whole. Our Army is becoming an army of the poor and the black defending a society that is predominantly white and middle class.

There are many, including the editors of the Wall Street Journal, who believe this problem cannot be solved without a return to peacetime conscription. But I believe they are mistaken.

The chief cause of the manpower problem has not been a return to our historic tradition of a volunteer military in peacetime, but years of pay caps, pay compressions, and neglect from Congress and preceding administrations that have driven military wages so low that patriotic servicemen have had to choose between their duty to their country, and their duty to their families.

The recruitment problem stems from a different source: The attitude of many of the architects of the All-Volunteer Force that service in the Armed Forces is a job like any other job, and that the ranks can be filled by young men and women responding to "marketplace incentives," chiefly cash up front.

Such a notion is insulting to our servicemen and women and dangerous to the security of our country.

If we describe service in the Armed

Forces as little different from clerking at the five-and-dime or pumping gas at the local filling station, then the upwardly mobile young men and women we need so badly will continue to ignore military service in favor of better paying jobs.

But if we present military service as a patriotic duty; as a rewarding, fulfilling experience in itself, and as a means of obtaining a step up on the ladder of success, then we will be able to obtain, voluntarily, the citizen-soldiers we require to keep our defenses strong.

What we require to make the Volunteer Force work is an incentive to convert the latent patriotism of our young people into a visit to the recruiting station; some reasonable compensation for deferring their career objectives for the 2, 3, or 4 years required to discharge their obligation to serve their country.

We need a new GI bill of rights.

It must be emphasized that the GI bill is not an untested theory, but a tried and proven alternative to both continued reliance on "marketplace incentives," and a return to the draft.

The plunge in recruit aptitude did not begin, as draft advocates suggest, when the draft ended in 1972; it happened after Congress terminated eligibility for the Vietnam-era GI bill in 1976.

The fourth quarter of the year is usually the poorest recruiting period for the Armed Forces. But the period between October 20, 1976, when termination of eligibility for the GI bill was announced, and December 31, when termination went into effect, was the best recruiting quarter in the history of the AVF.

We cannot say we didn't know this would happen. In September 1974, the Army took a comprehensive survey at Armed Forces entrance examining stations throughout the country. That survey revealed termination of the GI bill would reduce the pool of potential Army recruits by as much as 36.7 percent, all right off the top.

Prof. Charles Moskos of Northwestern University, the distinguished military sociologist who has done more and better work in this area than any other, estimates a properly drafted GI bill would increase by 50,000 to 100,000 the number of high-quality volunteers entering the Armed Forces each year, more than enough to offset the shortages that have plagued the Army in recent years, and to replace 15,000 to 20,000 volunteers in the lowest mental category with volunteers of greater aptitude.

And as it strengthens our defenses, a new GI bill will be saving taxpayers hundreds of millions of dollars.

It is almost as expensive not to have a GI bill as it is to have one. The Army is very concerned about its problem of attrition—servicemen who are found unfit for military service and are given administrative discharges prior to completion of their term of obligated service. High school dropouts attrit at half the rate of high school graduates, and college-eligible high school graduates attrit at only a fraction of the rate of high school graduates as a whole. The General Accounting Office estimates that each serviceman who attrits costs taxpayers $12,000. But the estimated per capita cost of providing a 4-year GI bill is only $10,000. So each time we replace a potential attritee with a GI-bill-motivated volunteer, we will be saving the taxpayer money.

Moskos estimates the countervailing savings to the Department of Defense as a result of enactment of a new GI bill could be as high or higher than $750 million a year. This includes savings through reduced attrition, plus savings in training costs—smarter people are easier to train; fewer disciplinary problems—high school graduates get into trouble less frequently than dropouts; and lower costs relating to the provision of benefits to dependents of married junior enlisted personnel—high school graduates are far more likely to be single.

Estimates for the stabilized annual outlays for the GI bill, by contrast, range from $750 million a year to $1.5 billion a year, depending on the level of benefits provided and estimates of their utilization. This means the net cost of the GI bill would range from zero to $750 million a year—about one-sixth of what we are now spending on the six direct loan and grant programs administered by the Department of Education.

But it would take at least 6 or 7 years for the GI bill to reach that stabilized annual cost. There would be no cost at all for 2 years, since potential beneficiaries would all be in the service earning their entitlement. Outlays would begin at about $200 million in the third fiscal year after enactment, and rise by slightly greater than that amount each year for 4 years, until there were four classes of beneficiaries in school at the same time.

The countervailing savings, on the other hand, would begin almost immediately. This means that for at least 4 and possibly for 5 years the annual savings resulting from enactment of a new GI bill would be greater than the outlays for it. It would take 8 or 9 years before the total outlays for the GI bill would overtake the savings it would generate.

In the long run, of course, the GI bill cannot help but be a good deal for the taxpayer. No definitive research has been done in this area, but those most knowledgeable guess that beneficiaries of the World War II GI bill ultimately will return to the Federal Treasury in higher tax payments as a result of their greater earning power about three times what it cost to provide them with their education. While we cannot expect anything approaching a commensurate return for a new GI bill—the economic, if not the psychic, benefits of a college education having declined since then—we have no reason to suppose that today's GI bill-educated veterans will not return to the Treasury more than what it cost to educate them.

Enactment of a new GI bill can do the Nation yet another service: it could be the first step in establishment of a system of voluntary national service, which would pay the Nation big dividends in areas far removed from the national defense. If we can move to a system of affirmative action where society's rewards and honors are based not on inherent characteristics such as race or sex, but on service to the Nation performed, that alone would be reason enough for it. When we add to this distant goal the fact that a new GI bill can solve our military recruitment problem without a wrenching and divisive resort to peacetime conscription, and can save us up to $3 billion in the next 2 critical fiscal years, it is easy to understand why enactment of a new GI bill of rights is the most important piece of defense legislation Congress can adopt this year.

HOUSING CRISIS DUE TO HIGH INTEREST RATES

o Mr. SASSER. Mr. President, this Nation's housing industry has been devastated by the continuing high level of interest rates we have experienced since October 1979 when the Federal Reserve Board embarked on its present tight money policy.

I have spoken out early and often on the need to bring interest rates down and thereby ease the housing crisis we are now experiencing.

My own State of Tennessee should be building about 60,000 housing units a year to meet the needs of a growing and changing population.

But in 1979, we fell about 20,000 units short of that goal and in 1980, we missed this goal by about 27,000 units. And unless our interest rates come down, we will continue to miss that mark, further denying the opportunity for young and middle-class Tennessee families to own their homes.

Mr. President, the American people are looking to the Congress and the President to take effective action in alleviating the housing crisis. That is the message contained in a recent editorial by the Nashville Banner which I ask to be printed at the conclusion of my remarks.

So let us move forward with the monetary and financial policies that are so necessary to bring down high interest rates and bring new life to the Nation's housing industry.

The editorial follows:

[From the Nashville Banner, June 5, 1981]

We Are in a Housing Crisis, and Washington Must Act

This Nation's burgeoning housing crisis continues its perilous route with the disclosure that in April the average cost of a new house reached an appalling record $84,000. At prevailing mortgage rates of 15.25 percent, the monthly principal and interest payment on that average house, with 10 percent down and a 25-year mortgage, would be $943.49.

The Census Bureau and the Department of Housing and Urban Development found the average price of a new house somewhat lower in the South—$76,100. But elsewhere, regional averages exceeded the national figure. In the Northeast, it was $94,700. In the West, it was $91,400. And in the North Central states, the average was $90,700.

Inflation has increased the cost of the government's "constant house" of 1,700 square feet from $54,200 in 1977 to $79,900 after the first quarter of this year, and to $84,000 by April, when new-house sales fell 14 percent from March to 42,000, the second lowest monthly figure in 11 years, according to the National Association of Home Builders.

The rising costs of material and labor, plus steep interest rates for money to finance construction, have put Tennessee in an un-

precedented housing crisis for the next five years, unless 60,000 dwellings are built each year, said E. V. King, executive director of the Tennessee Housing Development Agency.

Statewide housing starts—private homes, apartments and mobile homes—dropped to 33,200 in 1980 from 40,500 in 1979, a THDA report shows. In 1978, there were 49,200 dwellings built in the state. Contributing to the growing housing shortage is the increase in apartment rents as availability of vacant apartments declines.

Mr. King said that "to cope with the housing shortage, a lot of young people are going to stay at home and live with their parents instead of renting or buying a home. And there will be an increase of people living together who are unrelated, but who can't find affordable living space. The long-term effect is not a good thing because in overcrowded conditions over a period of time people act out their hostilities in more violent terms."

Tennesseans with the lowest incomes will have the least chance to get adequate, affordable housing, said THDA research coordinator Carl R. Siegrist, Jr. His view was reinforced by Bob Sheehan, director of economic research for the home builders association, who said fewer than 3 percent of American families can afford to buy the average house. The main cause is the rise in new-home mortgage rates—247 percent in the past 11 years (as against a 104 percent rise in monthly earnings) plus escalating costs of material and labor, fueled by inflation, which caused new house costs to double in the past seven years. In January, the house that cost $76,300 could have been purchased for $38,900 in 1974.

The result is that developers are making great efforts—including "bargain" prices—to sell what they have rather than anything new. "As long as you have high interest rates, people are not beating on the doors to buy," commented Michael Sumichrest, the chief economist for the home builders association. "Financing is hard for buyers to get. It's not a very good way to do business."

In a full-page advertisement appearing in newspapers recently, the National Association of Realtors praised President Reagan for his leadership in attempts to slow government spending and thus help overcome inflation. The Realtors hope for a 2 percent decrease in inflation, a lowering of interest rates by 1 to 2 points, the provision of 2 milliion additional new homes, creating the opportunity for an added 4 million families to upgrade existing housing and producing 1 million new jobs and a balanced budget by 1984, which, they said, "would put us on the road to beat inflation and provide housing for many more Americans."

The Realtors pointed out that the nation is "desperately short of housing. We entered the 1980s more than a million houses behind. By the end of this year, we'll be short by more than 2 million. Just to keep pace with new families formed in the '80s, Americans must build at least 2 million homes each year."

Last year, the Realtors said, competition for housing and for financing drove up the typical home buyer's monthly payment from $460 to $630—a 35 percent increase long since eclipsed this year.

"Clearly, the dream of home ownership is fading for most Americans who don't already own a home," the Realtors said. "The battle for spending reductions is also the battle to earn tax relief. Tax relief must be tied to spending reductions to reduce the deficit and lower inflation and interest."

The Metro Department of Codes Administration said that in February residential construction permits in Nashville were for only 60 living units to cost $3.2 million, compared to 106 permits in February last year at $3.9 million. The slump in housing is taking a growing toll, not only in Nashville but nationwide, from sawmills to cement plants, from appliance stores to real estate firms.

Members of Congress on both sides of the aisle must agree there is a housing crisis of major proportions. Unless the pressures that have been building in recent years are relieved, the growing crisis will not abate and indeed may easily become explosive. The place to start is in Washington, and the time to start is now.●

STATE AND LOCAL GOVERNMENTS NEED AUTHORITY TO GO FORWARD WITH MORTGAGE REVENUE BOND PROGRAM

● Mr. SASSER. Mr. President, on June 9, along with Senators BAKER, BUMPERS, PRYOR, PELL, and PACKWOOD, I introduced legislation to amend the Mortgage Subsidy Bond Tax Act of 1980 in order to permit State and local governments to proceed with the issuance of mortgage revenue bonds for single and multifamily homes. Since June 9, Senators CHAFEE, MELCHER, DURENBERGER, ABDNOR, and HUDDLESTON have joined in cosponsoring S. 1348.

The importance of this legislation is highlighted by a recent analysis of the tax-exempt housing bond situation by Mr. Grady Haynes, chairman of the Tennessee Housing and Development Agency (THDA).

Mr. Haynes has served on THDA since 1973 and has been chairman of THDA since 1980. Grady Haynes has also been a former president of the Tennessee Building Materials Association and is a past president of the National Lumber and Building Materials Dealers Association. Grady Haynes knows the housing business, and his analysis of the need for the passage of S. 1348 attests to that fact.

Mr. President, I ask that Mr. Haynes' statement, "The Use of Tax Exempt Housing Bonds to Finance Single Family Housing," be printed in the RECORD at this point.

The statement follows:

USE OF TAX EXEMPT HOUSING BONDS TO FINANCE SINGLE FAMILY HOUSING

(By Grady R. Haynes)

The nation's low and moderate income homebuyers—and housing industry—would benefit under legislation introduced recently in Congress.

Sponsored by a bipartisan group of lawmakers, H.R. 3614 and S. 1348 offer technical "clean up" amendments to the Mortgage Subsidy Bond Tax Act passed in 1980. The legislation addresses several areas in the new bond law which have prevented housing finance agencies from issuing any bonds for single family housing this year.

The inability of the agencies to sell housing bonds has been a major contributing factor to the extremely low value of 1981 housing starts in our country. During 1979 and 1980, about $9.5 billion in housing bonds were issued each year to finance the purchase of single family homes for low and moderate income families. And, by this time last year, over $5 billion of these bonds had been issued. However, this year's "zero" bond-issuance has combined with high interest rates to seriously stymie low and moderate income homebuyers and the housing industry.

Relief for those homebuyers and the housing industry is being proposed through the "clean up" legislation—H.R. 3614 introduced by Rep. John Duncan (R-Tn.) and S. 1348 introduced by Sen. Jim Sasser (D-Tn.). Cosponsors on the Senate bill include Sens. Howard Baker (R.-Tn.), Dale Bumpers (D-Ark.), Bob Packwood (R-Oregon), Claiborne Pell (D-R.I.), and David Pryor (D-Ark.).

The federal law that became effective January 1, 1981 limits the total amount of tax exempt housing bonds issued by any state to finance single family housing to the greater of $200 million or 9% of the average of the total mortgages made to finance single family housing in a state over the past three years.

When this bill was debated in Congress, it was estimated that $188 billion worth of single family mortgages were originated throughout the country during the calendar year of 1979. If one assumes that this represents the average of the last three years—then Congress intended to permit $16.9 billion worth of these bonds to be issued this year. This would finance the purchase of approximately 325,000 homes (new and existing)—after the price restrictions under the new act are applied.

The total impact of bond-financed loans on the housing industry will be even greater than the numbers indicate because many of these loans will be used to finance the sale of low-priced existing homes, releasing the equity that has been accumulated by the present owner. The equity, in turn, will be used to purchase a better used home, or a new home—thereby increasing the sale of homes in all price categories. This "ripple" effect can be easily confirmed by any agency that has used housing bonds to finance single family housing in the past few years. Many Tennessee private lenders who originate and service THDA single family loans estimate they will make at least one larger regular loan for each Agency loan they originate. The very large dollar volume of equity released from the sale of existing homes is often overlooked by economists and its effects on the housing industry have been greatly underestimated.

With average rates for regular mortgage financing now a little over 16%, very few families can afford to meet the required monthly mortgage payments. If single family bonds could be issued by housing agencies at this time, their interest rate would be from 11.5% to 12%. The exact interest rate would be determined by the price the agency receives for its bonds, reflecting the condition of the bond market on the day of the sale. At the lower rates, many more families would be able to qualify to purchase their home.

The quick passage of H.R. 3614 and S. 1348 should be urged—and given top priority—by everyone in the shelter industry. It should also continue to receive bipartisan support in Congress.

While some states and local governments have not yet issued any housing bonds for single family homes, nearly all of the state housing agencies are now in a position to quickly get their programs underway. Many local governments also have their programs ready. Thus, low and moderate income homebuyers will find relief and the housing industry will get a big and quick boost—as soon as the "clean up" legislation passes and the necessary regulations are issued by the Treasury Department.

Mr. SASSER. Mr. President, I would urge that any Senator wishing to cosponsor S. 1348 contact Cathy Anderson of my staff at 224-9546.●

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The time for morning business has expired.

DEPARTMENT OF JUSTICE AUTHORIZATIONS, 1982

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of the pending business, S. 951, which will be stated by title.

The legislative clerk read as follows:

A bill (S. 951) to authorize appropriations for the purpose of carrying out the activities of the Department of Justice for fiscal year 1982, and for other purposes.

AMENDMENT NO. 96 TO AMENDMENT NO. 69

The PRESIDING OFFICER. Under the previous order, the Senator from North Carolina (Mr. HELMS) is recognized.

Mr. HELMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. DANFORTH). Without objection——

Mr. CHAFEE. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue to call the roll.

Mr. HELMS. Mr. President, I did not understand the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island objected.

Mr. HELMS. I see. Very well.

The PRESIDING OFFICER. The clerk will continue with the quorum call.

The assistant legislative clerk continued to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. HELMS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is S. 951, to which are pending two amendments offered by the Senator from North Carolina.

Mr. HELMS. I thank the Chair. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HELMS. Mr. President, may I ask the Chair what is the pending business.

The PRESIDING OFFICER. The pending business is S. 951 to which are pending two amendments offered by the Senator from North Carolina.

Mr. HELMS. I thank the Chair.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MATHIAS). Is there objection? The Chair hears none, and it is so ordered.

AMENDMENT NO. 96 (AS MODIFIED)

(Purpose: To prohibit the Department of Justice from maintaining suits involving directly or indirectly, the mandatory busing of schoolchildren and to establish reasonable limits on the power of courts to impose injunctive relief involving the transportation of students)

Mr. HELMS. Mr. President, I send to the desk a modification of the pending amendment and ask that it be stated.

The PRESIDING OFFICER. The Senator may modify his amendment.

The modification will be stated.

The legislative clerk read as follows:

The Senator from North Carolina (Mr. HELMS) proposes a modification of his amendment numbered 96.

Mr. HELMS. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The modified amendment is as follows:

In lieu of the language proposed to be inserted by the amendment of the Senator from North Carolina, Mr. Helms, insert the following:

minus $37,653,000;

(C) financial assistance to joint State and joint State and local law enforcement agencies engaged in cooperative enforcement efforts with respect to drug related offenses, organized criminal activity and all related support activities, not to exceed $12,576,000, and to remain available until expended: $50,229,100;

(D) No part of any sum authorized to be appropriated by this Act shall be used by the Department of Justice to bring or maintain any sort of action to require directly or indirectly the transportation of any student to a school other than the school which is nearest the student's home, except for a student requiring special education as a result of being mentally or physically handicapped.

Section 2.5. (a) This Section may be cited as the "Neighborhood School Act of 1981."

(b) The Congress finds that—

(1) court orders requiring transportation of students to or attendance at public schools other than the one closest to their residences for the purpose of achieving racial balance or racial desegregation have proven an ineffective remedy and have not achieved unitary public school systems and that such orders frequently result in the exodus from public school systems of children which causes even greater racial imbalance and diminished support for public school systems;

(2) assignment and transportation of students to public schools other than the one closest to their residences is expensive and wasteful of scarce supplies of petroleum fuels;

(3) the assignment of students to public schools or busing of students to achieve racial balance or to attempt to eliminate predominantly one race schools is without social or educational justification and has proven to be educationally unsound and to cause separation of students by race to a greater degree than would have otherwise occurred:

(3½) there is an absence of social science evidence to suggest that the costs of school busing outweigh the disruptiveness of busing;

(4) assignment of students to public schools closest to their residence (neighborhood public schools) is the preferred method of public school attendance and should be employed to the maximum extent consistent with the Constitution of the United States.

(c) The Congress is hereby exercising its power under Article III, section I, and under section 5 of the Fourteenth Amendment.

LIMITATION OF INJUNCTIVE RELIEF

(d) Section 1651 of title 28, United States Code, is amended by adding the following new subsection (c):

"(c)(1) No court of the United States may order or issue any writ directly or indirectly ordering any student to be assigned or to be transported to a public school other than that which is closest to the student's residence unless—

"(i) such assignment or transportation is provided incident to the voluntary attendance of a student at a public school, including a magnet, vocational, technical, or other school of specialized or individualized instruction; or

"(ii) the requirement of such transportation is reasonable.

"(2) The assignment or transportation of students shall not be reasonable if—

"(i) there are reasonable alternatives available which involve less time in travel, distance, danger, or inconvenience;

"(ii) such assignment or transportation requires a student to cross a school district having the same grade level as that of the student;

"(iii) such transportation plan or order or part thereof is likely to result in a greater degree of racial imbalance in the public school system than was in existence on the date of the order for such assignment or transportation plan or is likely to have a net harmful effect on the quality of education in the public school district;

"(iv) the total actual daily time consumed in travel by schoolbus for any student exceeds 30 minutes unless such transportation is to and from a public school closest to the student's residence with a grade level identical to that of the student; or

"(v) the total actual round trip distance traveled by schoolbus for any student exceeds 10 miles unless the actual round trip distance traveled by schoolbus is to and from the public school closest to the student's residence with a grade level identical to that of the student."

DEFINITION

(e) The "school closest to the student's residence" with "a grade level identical to that of the student" shall, for purpose of calculating the time and distance limitations of this Act, be deemed to be that school containing the appropriate grade level which existed immediately prior to any court order or writ resulting in the reassignment by whatever means, direct or indirect including rezoning, reassignment, pairing, clustering, school closings, magnet schools or other methods of school assignment and whether or not such court order or writ predated the effective date of this legislation.

SUITS BY THE ATTORNEY GENERAL

(f) Section 407(a) of title IV of the Civil Rights Act of 1964 (Public Law 88-352, section 407(a); 78 Stat. 241, section 407(a); 42 U.S.C. 2000c-6(a)), is amended by inserting after the last sentence the following new subparagraph:

"Whenever the Attorney General receives a complaint in writing signed by an individual, or his parent, to the effect that he has been required directly or indirectly to attend or to be transported to a public school in violation of the Neighborhood School Act and the Attorney General believes that the complaint is meritorious and certifies that the signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief, the Attorney General is authorized to institute for or in the name of the United States a civil

action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder."

(g) For the purpose of this Act, "transportation to a public school in violation of the Neighborhood School Act" shall be deemed to have occurred whether or not the order requiring directly or indirectly such transportation or assignment was entered prior to or subsequent to the effective date of this Act.

(h) If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

(i) It is the sense of the Senate that the Senate Committee on the Judiciary report out, before the August recess of the Senate, legislation to establish permanent limitations upon the ability of the federal courts to issue orders or writs directly or indirectly requiring the transportation of public school students.

Mr. WEICKER. Mr. President, I ask for the yeas and nays on the amendment as modified.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. HELMS. Mr. President, the distinguished and able Senator from Louisiana (Mr. JOHNSTON) and I conferred over the weekend with a number of other Senators, including the Senator from North Carolina (Mr. EAST), the Senator from Utah (Mr. HATCH), the Senator from South Carolina (Mr. THURMOND), the Senator from Delaware (Mr. BIDEN), and others; and I have agreed to accept the amendment of the Senator from Louisiana as a modification of my amendment.

It occurs to me that the Senator from Louisiana might wish to discuss the provisions of his amendment at this time; and when he has done that, I will want to pose a few questions to him.

I yield the floor.

The PRESIDING OFFICER. The Senator from Louisiana.

Mr. JOHNSTON. I thank the distinguished Senator from North Carolina.

Mr. President, this amendment, which is offered on behalf of myself and the Senator from North Carolina, as well as Senators HATCH, THURMOND, EAST, STENNIS, BENTSEN, CANNON, MATTINGLY, EXON, ANDREWS, LAXALT, NICKLES, JEPSEN, and DECONCINI, is a compromise amendment to that I had originally intended to offer.

Mr. President, at this point, I ask unanimous consent to have printed in the RECORD, for the purpose of comparison, the original amendment I had intended to offer.

Mr. WEICKER. Mr. President, reserving the right to object, what is it? I was in conversation.

Mr. JOHNSTON. I asked unanimous consent to have printed in the RECORD, for the purpose of comparison, the original amendment I had intended to offer.

Mr. WEICKER. I have no objection.

There being no objection, the amendment was ordered to be printed in the RECORD, as follows:

At the end of the amendment to the bill add the following new section:

"Section ——. (a) This section may be cited as the "Neighborhood School Act of 1981."

(b) The Congress finds that—

(1) court orders requiring transportation of students to or attendance at public schools other than the one closest to their residences for the purpose of achieving racial balance or any racial composition have been an ineffective remedy and have not achieved unitary public school systems and that such orders frequently result in the exodus from public school systems of children which causes even higher racial imbalances and less support for public school systems;

(2) assignment and transportation of students to public schools other than the one closest to their residences is expensive and wasteful of scarce supplies of petroleum fuels;

(3) the pursuit of racial balance or racial composition at any cost is without constitutional or social justification and that the assignment of students to public schools or busing of students to achieve racial balance or to attempt to eliminate predominantly one race schools has been overused by courts of the United States and is in many instances educationally unsound and causes separation of students by race to a greater degree than would have otherwise occurred;

(4) assignment of students to public schools closest to their residence (neighborhood public schools) is the preferred method of public school attendance and should be employed to the maximum extent consistent with the Constitution of the United States.

(c) The Congress is hereby exercising its power to enforce, by appropriate legislation, the provisions of fourteenth amendment.

LIMITATION OF INJUNCTIVE RELIEF

(d) Section 1651 of title 28, United States Code, is amended by adding the following new subsection (c):

"(c)(1) No court of the United States may order or issue any writ ordering directly or indirectly any student to be assigned or to be transported to a public school other than that which is closest to the student's residence unless—

"(i) such assignment or transportation is provided incident to attendaance at a 'magnet', vocational, technical, or other school of specialized or individual instruction;

"(ii) such assignment or transportation is provided incident to the voluntary attendance of a student at a school; or

"(iii) the requirement of such transportation is reasonable.

"(2) The assignment or transportation of students shall not be reasonable and a court of the United States shall not directly or indirectly issue any writ ordering the assignment or transportation of any student if—

"(i) there are reasonable alternatives available which involve less time in travel, distance, danger, or inconvenience;

"(ii) such assignment or transportation requires a student to cross a school district having the same grade level as that of the student;

"(iii) such transportation plan or order or part thereof is likely to result in a greater degree of racial imbalance in the public school system than was in existence on the date of the order for such assignment or transportation plan or is likely to have a net harmful effect on the quality of education in the public school district;

"(iv) the total actual daily time consumed in travel by schoolbus for any student exceeds by 30 minutes the actual daily time consumed in travel by schoolbus to and from the public school with a grade level indentical to that of the student and which is closest to the student's residence; or

"(v) the total actual round trip distance traveled by schoolous for any student exceeds by 10 miles the total actual round trip distance traveled by schoolbus to and from the public school closest to the student's residence and with a grade level identical to that of the student.".

DEFINITION

(e) The "school closest to the student's residence" with "a grade level identical to that of the student" shall, for purpose of calculating the time and distance limitations of this Act, be deemed to be that school containing the appropriate grade level which existed immediately prior to any court order, decree or writ resulting in the reassignment by whatever means, including rezoning, reassignment, pairing, clustering, school closings, magnet schools or other methods of school assignment and whether or not such court order, decree or writ predated the effective date of this legislation.

SUITS BY THE ATTORNEY GENERAL

(f) Section 407(a) of title IV of the Civil Rights Act of 1964 (Public Law 88-352, section 407(a); 78 Stat. 241, section 407(a); 42 U.S.C. 2000c-6(a)), is amended by inserting after the last sentence the following new subparagraph:

"Whenever the Attorney General receives a complaint in writing signed by an individual, or his parent, to the effect that he has been required directly or indirectly to attend or to be transported to a public school in violation of the Neighborhood School Act and the Attorney General believes that the complaint is meritorious and certifies that the signers of such complaint are unable, in his judgment, to initiate and maintain appropriate legal proceedings for relief, the Attorney General is authorized to institute for or in the name of the United States a civil action in any appropriate district court of the United States against such parties and for such relief as may be appropriate, and such court shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section. The Attorney General may implead as defendants such additional parties as are or become necessary to the grant of effective relief hereunder."

(g) For the purpose of this Act, "transportation to a public school in violation of the Neighborhood School Act" shall be deemed to have occurred whether or not the order requiring directly or indirectly such transportation or assignment was entered prior to or subsequent to the effective date of this Act.

(h) If any provision of this Act, or the application thereof to any person or circumstance, is held in valid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Mr. JOHNSTON. Mr. President, the amendment, as offered, exercises the power of Congress under section 5 of the 14th amendment and under article III of the Constitution.

Section 5 of the 14th amendment authorizes Congress to enforce, by appropriate legislation, the provisions of the 14th amendment. Article III provides that Congress shall provide for a system of inferior Federal courts and may provide for the jurisdiction of the Supreme Court, with such exceptions and with such regulations as Congress may provide.

These two provisions of the Constitution, we believe, give Congress wide latitude in what we are permitted to do in terms of enforcement of the 14th amendment.

The 14th amendment, of course, prohibits any State from denying any person of due process or equal protection. These operative words have been used by the Supreme Court, first, in the case of Brown against Board of Education, in 1954, to provide for the desegregation of schools.

Later in 1970 and 1971, the Supreme Court in the Green and Swann cases originating in North Carolina provided, in effect, that you must go beyond simple desegregation and eliminate, "root and branch" was the phrase, segregation in schools. The Court went further, in effect, to say that this elimination of segregation would require in some instances the busing of children.

Mr. President, this was a brave experiment of the Court, taken as against a background of the overriding national need to eliminate segregation, a goal to which I and I think the overwhelming majority of the Members of this Senate are committed. We want and are steadfast in our desire to do away with segregation in public schools and to permit access of all students on an equal and just basis to educational opportunities.

However, Mr. President, the brave experiment of the Green and Swann cases and its progeny has not worked, and it is time that this Congress recognize that this has not worked. It has not worked not only educationally, but it has not worked to achieve that goal of desegregation of public schools.

Mr. President, because of the Green and Swann cases and because of the extent to which the Supreme Court has gone, American education is now in turmoil. In my own State of Louisiana in Rapides Parish, or county, as it would be called in other States, what I call the brave experiment of school desegregation has been carried to the absolute ridiculous extreme of having children bused by court order between 30 and 40 miles in one direction, resulting in not only massive opposition of white students but massive opposition of black students as well, to the extent that in this particular area—and my colleagues will remember on CBS news when this was a running feud stretching over some weeks—the black and white students together formed a private school with black and white teachers in order to avoid this order of 30- to 40-mile busing.

So, Mr. President, in order to avoid that kind of ridiculous result what we have done is exercised those powers under section 5 of the 14th amendment as well as under article III of the Constitution to put limits on the degree to which courts can order this busing.

Mr. President, I allude to the fact that the Judiciary Committee is in the midst of hearings on this matter. We have had on my bill, and the original form of this amendment was offered as a bill in this Congress with a number of coauthors as S. 528, hearings in the Judiciary Committee. Nevertheless, the Judiciary Committee is continuing with hearings on this very difficult subject matter.

And it is the feeling of the many members of that Judiciary Committee, including Senator HATCH, that given more time with further hearings and with further consideration of this matter a more definitive resolution of this whole matter can be arrived at, so it is in that sense that Senator HATCH and Senator EAST have asked that we include the following provision as the last provision of this amendment:

It is the sense of the Senate that the Senate Committee on the Judiciary report out before the August recess of the Senate legislation to establish permanent limitations upon the ability of Federal courts to issue orders or writs directly or indirectly requiring the transportation of public school students.

This means that if this amendment passes and becomes law then the Judiciary Committee will be charged before the August recess with reporting out legislation which will be more definitive in nature, the shape of which I believe, Mr. President, will probably prohibit busing altogether, also using two provisions just referred to, that is, section 5 of the 14th amendment as well as article III of the Constitution.

Mr. President, the amendment as offered provides that after making certain findings as to the nonworkability of busing, findings of fact which the Constitution and the Supreme Court has said on a number of occasions that Congress is particularly well suited to do, we make certain findings of fact to the effect that busing has not been an effective remedy, to achieve desegregation of public schools because of the phenomenon of white flight and also because it is unsound education.

We further provide that no court may issue an order directly or indirectly ordering any student to be assigned to any school other than the school closest to his place of residence, unless, first, that the assignment is incident to the voluntary attendance of the student at the school, or second, that the requirement of transportation is reasonable. So in effect what we have done is prohibit court orders for busing unless that assignment is reasonable.

We further define "reasonable" to provide that the assignment or transportation of students shall not be reasonable if, first, there are reasonable alternatives which involve less time and travel, distance, danger or inconvenience; second, such assignment or transportation requires a student to cross a school district having the same grade level as that of the student, and by crossing a school district we mean to go from A, across B to district C. That would be prohibited and would be declared to be unreasonable. And, third, that such transportation plan or order or part thereof is likely to result in a greater degree of racial imbalance in the public school system than was in existence on the day of the order or is likely to have a net harmful effect on the quality of education.

What this means of course is that if the courts in their experience—and they are qualified I think to make these kinds of adjustments—should determine that to order busing to a certain extent would not result in desegregation, that the students would be likely not to go as they were in Rapides Parish when they closed the Forest Hill School, then the court in that instance is prohibited from ordering the busing because it would be declared unreasonable.

We further provide, Mr. President, that the assignment or transportation of students shall not be reasonable if the total actual daily time consumed in travel by school bus for any student exceeds 30 minutes, unless such transportation is to and from a public school closest to the student's residence with a grade level identical of that of the student, or if the total actual round trip distance traveled by school bus for any student exceeds 10 miles unless the actual round trip distance traveled by school bus is to and from the school closest to the student's residence with a grade level identical to that of the student.

We further define the school closest to the student's residence with a grade level identical to that of the student for purpose of calculating these time and distance limitations to be deemed to be that school containing the appropriate grade level which existed immediately prior to any court order or writ resulting in the assignment by whatever means directly or indirectly including rezoning, reassignment, pairing, clustering, school closing, magnet schools or other methods of school assignment and whether or not such court order or writ predated the effective date of this legislation.

To explain briefly what this means, Mr. President, we provide that you cannot bus where the total actual time exceeds 30 minutes or 10 miles round trip, 30 minutes or 10 miles. We provide that you can exceed 30 minutes or 10 miles if the transportation is to the school closest, with the appropriate grade level and we define school closest with the appropriate grade level to be that school with that grade level which existed prior to the court order if they are now under court order. So that, for example, if in 1980 a court ordered a school closed as, let us say, in Rapides Parish, La., so that that school is now closed that school would, nevertheless, be considered to be the school closest for the purpose of this amendment in calculating what the school closest is.

Further we provide, Mr. President, that the Attorney General of the United States is empowered to enforce the limitations of this amendment in precisely the same way as the Attorney General now enforces the provisions of the Civil Rights Act of 1964; that is to say upon the receipt of a complaint by any student that he is being bused in excess of the limitations of this amendment, then the Attorney General is empowered to bring a suit or to intervene in a suit in behalf of that student to prevent that busing.

In effect, what this means, Mr. President, is two things: It is, first, the Attorney General can enforce the personal right of that student who is now given a right not to be bused in excess of these distances; and, second, it provides, in effect, for a retroactive effect; that is, if

there were a court order last year or 5 years ago which provides for this busing and if that busing is in excess of the limits provided in this amendment, then the Attorney General or indeed the student on his own behalf could bring a suit or intervene in a suit to seek that relief.

We make it explicitly clear that the amendment will have retroactive effect by providing that for the purpose of this act transportation to a public school in violation of the Neighborhood School Act shall be deemed to have occurred whether or not the order requiring directly or indirectly such transportation or assignment was entered prior to or subsequent to the date of this act.

We further provide, of course, for a severability provision so that if any provision of this amendment in any particular circumstance is rendered illegal or unconstitutional the remaining provisions of the amendment will not be affected.

Mr. President, I think it is a very fair and appropriate question to ask why this amendment; if in effect busing has been shown to not be workable as we believe the overwhelming evidence so revealed, why was the amendment in the first instance and why this amendment as a compromise amendment does not prohibit all busing in all circumstances?

Mr. President, there is a great difference of opinion among legal scholars as to what the proper reach of the powers of Congress are under the Constitution. There are some legal scholars who believe that Congress under section 5 of the 14th amendment may use those operative words "enforce by appropriate legislation" to select among remedies for the court to use but may not prohibit all remedies whatsoever with respect to school busing.

That is to say that the Congress in exercising its fact-finding power, in its power to select remedies, may, as in this instance, provide that the court is not stripped of either jurisdiction or power to order busing within these limits, but that to go further than that and to prohibit all busing would, according to some legal scholars, be illegal, be ultra vires the power of the Congress under the Constitution to make such an order.

So what we have done on this amendment, this compromise amendment, which is broadly supported in this Senate, would be to establish reasonable limits to tell the Supreme Court that what they have done has not worked but that the remedies still left and provided for in this amendment are likely to work. And we believe, Mr. President, that that would be appropriate under the Constitution so to do.

As I mentioned, there are other legal scholars, Mr. President, who believe that the Congress, under section 5 of the 14th amendment, has the power completely to prohibit busing and further that the Congress under article III of the Constitution has the power completely to withdraw jurisdiction from the lower Federal courts and from the Supreme Court itself in ordering that busing.

The last clause of this amendment which directs the Judiciary Committee to report out further legislation before the August recess will resolve that dispute insofar as the Judiciary Committee can come up with a consensus—and I believe that they can, and they will resolve that legal question in reporting out that legislation prior to August.

So it is not intended that this amendment be the final word and the final action of this Congress. Indeed, my colleague, Senator HATCH, refers to the amendment as an interim amendment and the amendment which he would report out of the Judiciary Committee as a definitive amendment. However characterized, it is very clear—and I want to emphasize this intent—that the passage of this amendment, if it should pass, and I trust it will, not only does not foreclose the Judiciary Committee from further and more definitive action but that in fact it is anticipated and in fact it is mandated in this very amendment that further action of the Judiciary Committee occur.

Mr. President, I have some further remarks but I see my distinguished colleague from North Carolina on his feet who may want to ask some questions, so at this point I would yield for such questions as he may have.

Mr. HELMS. Mr. President, I thank the distinguished Senator from Louisiana.

Let me say at the outset to my friend that I perceive that there is a great body of opinion not only in this Senate but across the country that forced busing should not be a remedy; that is to say, the majority of the American people are fed up to here with seeing their children and, in my case, grandchildren being hauled across cities and counties just to satisfy the whim and caprice of some Federal judge or some bureaucrat.

But the amendment which the distinguished Senator from Louisiana would have offered, and which I agreed with him over the weekend to accept as a modification to the pending amendment, is certainly a prudent, interim step. And I trust that it will take care of the problems with which he is peculiarly and uniquely conversant in his own State.

But just to nail this down for the legislative history, Mr. President, I would like to ask the distinguished Senator from Louisiana several questions.

The Senator has alluded to the fact that the pending amendment differs in a few respects from S. 528, the Neighborhood School Act.

For instance, it is correct, is it not, that the Senator has added a new section defining a "school closest to the student's residence."

How does the Senator define a "school closest to the student's residence"?

Mr. JOHNSTON. We define a school closest to the student's residence as that school with the appropriate grade level which existed immediately prior to the rendering of a court order. We further make clear that the court order we refer to may precede the effective date of this act.

So that if the court order was rendered in 1970 or 1965 or whenever rendered, if it either called for busing or the reassignment of students, you, nevertheless, use that school or consider that school which had the appropriate grade level closest to the student's residence as being the benchmark for consideration and definition of the school closest to the residence of the student.

Mr. HELMS. I thank the Senator.

Now, I notice on page 3, I believe it is, of the unprinted amendment, the section of the Senator's amendment which enumerates unreasonable assignment or transportation of students includes the word "or" at the end of subsection IV. What were the reasons that the Senator had in mind for adding this?

Mr. JOHNSTON. Well, that is to make it clear that we are using the disjunctive in each of these tests so that busing will be considered to be unreasonable if it exceeds either the time limitations, that is, the 30 minutes, or the distance limitations, which is the 10 miles, or indeed if it violates either of the other three tests, which are reasonable alternatives, crossing of the school districts in that it is likely to result in a greater degree of racial imbalance, or to have a net harmful effect on public education.

So if any of these factors exist, it will be declared unreasonable and be beyond the limits of permissible court orders.

(Mr. ANDREWS assumed the chair.)

Mr. HELMS. I thank the Senator. Mr. President, I am not leading the witness, but, as I say, I do want the legislative history on the amendment as modified to be absolutely clear.

I would further ask the able Senator from Louisiana this question: Noting that the Senator's amendment contains a new section which refers to "transportation to a public school in violation of the Neighborhood School Act," I would ask the Senator why was this section added and what is its meaning?

Mr. JOHNSTON. In subsection (f) we empower the Attorney General, when he receives a complaint that a student has been bused directly or indirectly in violation of the Neighborhood School Act, we wanted to make very clear what that phrase "violation of the Neighborhood School Act" meant. And what it means and how we have spelled it out is that it means violation, whether or not that court order causing the violation was entered prior to or subsequent to the effective date of this legislation. So in effect, it makes it retroactive.

Mr. HELMS. I thank the Senator.

I have no further questions.

Mr. MATHIAS. I have a question, if the Senator would yield.

Mr. HELMS. If the Senator would withhold for one moment.

Mr. MATHIAS. Surely.

Mr. HELMS. The key to all of this discussion on this floor is to be found, I believe, in a sense of the Senate statement that is the concluding portion of the amendment as modified. It reads:

It is the sense of the Senate that the Senate Committee on the Judiciary report out, before the August recess of the Senate, legislation to establish permanent limitations upon the ability of the Federal courts to issue orders or writs directly or indirectly requiring the transportation of public school students.

I thank the Senator and I yield the floor.

Mr. MATHIAS. I am glad the Senator

from North Carolina did have an opportunity to make that last statement, because it leads directly into the question that I want to propound to the Senator from Louisiana. I believe that the Senator from North Carolina, as he so often does, has put his finger on the real gravamen of this whole issue. This is where it turns.

I would assume that when the Senator from Louisiana proposes language which says "The Judiciary Committee shall report," that could, of course, be a favorable report or it could be an unfavorable report, but that is in the womb of time. We do not know that yet.

But what I think is important to probe at this point is the basic, fundamental foundation upon which the Senator from Louisiana's amendment rests.

Now, some of the questions that the Senator from North Carolina has asked have dealt with some of the embellishments to this structure, some of the decoration that may appear upon the cornices and up near the roof. Let us get down to the foundation.

I believe the Senator from Louisiana said that his amendment rested on article III of the Constitution of the United States, did he not?

Mr. JOHNSTON. Well, I would say primarily upon section 5 of the 14th amendment, but also upon article III. If I had to choose between the two, I would, as we did in S. 528, choose section 5 of the 14th amendment.

However, I must say that we added in as part of the compromise the powers under article III, which to me are less clear but nevertheless somewhat persuasive.

Mr. MATHIAS. Well, I would agree that finding the authority for this amendment in article III would be less clear. In fact, I would find it very unclear.

I wonder what part of article III the Senator from Louisiana was referring to which seems to give any basis for such language.

Mr. JOHNSTON. Well, the pertinent operative part of article III provides that:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

It further provides for jurisdiction of the Supreme Court. Then it provides that:

> In all other cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

So what we have is a broad grant of power here to the Congress to establish or not establish lower Federal courts and to provide for a further jurisdiction in the Supreme Court under such regulations and such exceptions as the Congress may make.

This has been interpreted to mean, and I think on its face means, that the Congress may withdraw jurisdiction in whole or in part from lower Federal courts.

In fact, for example, in the Norris-LaGuardia Act, Congress withdrew the power of lower Federal courts to issue injunctions in labor disputes. That was upheld by the Supreme Court as being an appropriate exercise under article III.

It seems to me, Mr. President, that that upholding of the Norris-LaGuardia powers—and I cannot recall the name of the case at this point, but I can provide it to the Senator later—is precisely on point as to showing that article III does give to Congress that power to remove jurisdiction.

The real question is, it seems to me, not whether Congress has the power to remove that jurisdiction but whether, in fact, that removal of that jurisdiction conflicts with the Fifth Amendment. That is the real question, it seems, not whether or not we have the power to remove the jurisdiction. In the later case, I think it is very clear we have that power.

Mr. MATHIAS. Let me ask the Senator from Louisiana to read section 2 of article III, which says that "the judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution," and so on.

I would read that as vesting in the judicial branch of Government the immutable not only right but duty to hear cases which involve constitutional questions. If the courts should determine that this is a constitutional question, then the language that the Senator from Louisiana has proposed would, in effect, be nullable, would it not?

Mr. JOHNSTON. I say to the Senator that while that language in section 2 of article III might be susceptible of that interpretation, if tortured just a bit, the courts have, in fact, said that that is not what it means. Indeed, a school desegregation case—excuse me. The power of the Congress to provide for jurisdiction has simply been recognized by the courts.

Mr. HATCH. Will the Senator yield on this precise point?

Mr. JOHNSTON. Yes, I yield.

Mr. HATCH. There is little controversy, in my opinion, Mr. President, that the constitutional power to establish and dismantle inferior Federal courts has given Congress complete authority over their jurisdiction. This has been repeatedly recognized by the Supreme Court in *Sheldon et al.* v. *Sill*, 49 U.S. 441 (1850); *Kline* v. *Burke Construction Co.*, 260 U.S. 226 (1922); and *Lockerty* v. *Phillips*, 319 U.S. 182 (1943).

This amendment would be only a slight modification of lower Federal court jurisdiction. These inferior Federal courts would no longer have the authority to use one remedy among many for a finding of a constitutional violation.

They would still have full authority to hear segregation cases and would still have full authority to enjoin any Government action violating the Constitution, or full authority to recommend other remedies for the offense. The only thing they could not do is require, directly or indirectly, mandatory busing.

So I think the Senator from Louisiana is more right.

I would hasten to add that this bill does not, however, restrict in any way the authority of State courts to enforce the Constitution as they wish, neither does it restrict in any way the power of the Supreme Court to review State court proceedings and insure full enforcement of constitutional guarantees.

In short, this is a very, very narrow amendment. It only withdraws a single remedy which Congress finds inappropriate from the lower Federal courts. This is not nearly as expansive an abridgement of Federal court jurisdiction as Congress has seen fit to undertake in the past.

It is hardly as expansive as the 1839 law to remove from Federal court jurisdiction the decisions of the Secretary of the Treasury on tax disputes; 5 U.S. Statutes 339.

It is not nearly as significant in terms of economics as the 1867 statute providing that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court"; 14 U.S. Statutes 475.

It is not as controversial as Congress 1932 decision as the Senator from Louisiana has pointed out, in the Norris-LaGuardia Act to deprive Federal courts of the power to issue injunctions in labor disputes; 29 U.S.C. 107.

In 1934 Congress used the Johnson Act to qualify the power of the courts to enjoin public utility rates ordered by State agencies; 28 U.S.C. 1341. In 1942, Congress limited injunctions under the Emergency Price Control Act to an emergency court of appeals; 50 U.S.C. 901.

Finally in 1974, Congress barred court challenges to the Alaska pipeline for crude oil based on environmental grounds alone, which is something all of us remember as being very recent; 43 U.S.C. 1651. This is not nearly so sweeping as these past uses of article III of the Constitution. This merely deals with a single remedy, a single remedy that hardly anyone can say has worked smoothly, or worked at all.

The Constitution gives Congress power to set remedies for constitutional violations by vesting in us the authority to make laws "necessary and proper," to use constitutional terms for the carrying out of constitutional mandates.

I might add on this issue, for too long has Congress been silent. The courts have filled that vacuum with a remedy for racial discrimination that is in itself discriminatory.

I think it is time for Congress to speak, although I have my problems with this amendment, as the distinguished Senator from Louisiana knows. It is soft speaking but at least it will clarify that busing or discriminatory assignment of students to public schools is not an appropriate remedy for racial discrimination.

I might add that the distinguished Senator from Louisiana has made it abundantly clear that this is a temporary amendment. It is put on this particular bill in good faith that it will resolve conflicts and problems until our committee can come up with an amendment that, hopefully, will be a broad consensus amendment that the majority of the Members of the Senate can approve.

I do not, however, see any problems with constitutional arguments regard-

ing the favorability of this type of amendment.

Mr. JOHNSTON. Mr. President, I thank the distinguished Senator from Utah for his exegesis on the legality, the power of Congress under article III to restrict jurisdiction. I think it is abundantly clear, as his more full and definitive statement of cases has indicated.

I do say one thing: he stated this is a temporary amendment. It is not, of course, temporary according to its terms; it is temporary only in the sense that we ask, mandate, the Committee on the Judiciary to come up with a more definitive version, which we all hope will resolve these questions of the full reach of the power of Congress under section 5 of the 14th amendment and article II.

Mr. MATHIAS. But is it not true—the Senator from Louisiana says it is abundantly clear. I am sure it is abundantly clear to him and the proponents of the amendment. But is it not true that there is a kind of general limitation which exists over all congressional language, when it has to be viewed in its relationship to the comprehensive powers that are contained within the Constitution?

In other words, we relate the exercise of the specific grant of congressional authority to, say, limitations that are contained in the Bill of Rights. Is that not true? There may be a perfectly clear exercise of congressional authority granted by the Constitution, but it has to be exercised in conformance with the restrictions of the Bill of Rights.

Mr. JOHNSTON. The Senator is correct. When I say it is perfectly clear that Congress has the power to establish lower Federal courts and provide for their jurisdiction, I do think that is clear. As I said earlier, the central question is the reach, how far we can go in doing that as against the fifth amendment, which provides for due process, and, of course, the Supreme Court has said that the due process provisions of the fifth amendment are co-extensive for purposes of civil rights with those of the 14th amendment.

Mr. MATHIAS. So that, as we view these different powers that check and balance each other in this remarkable document, the Constitution, we do have to consider how they work amongst themselves, for and against themselves.

Mr. JOHNSTON. The Senator is entirely correct and I shall candidly tell him that the reason I did not take a more direct approach of prohibiting busing altogether is, frankly, that my view at this time, without the benefit of the hearings that will transpire in the Committee on the Judiciary between now and the August recess, it was my fear and my tentatively held opinion that to prohibit any form of busing would run into the restrictions of the fifth amendment.

Accordingly, this amendment does allow the court not only those remedies which the distinguished Senator from Utah referred to—that is, the power of the State courts to issue orders without any restrictions, the power of the court to do anything other than busing—and, indeed, it does not restrict their power up to the 10-mile and 30-minute limitations.

Mr. MATHIAS. Mr. President, I think the Senator from Louisiana obviously is familiar with the language that is the point of *Williams* v. *Rhodes*, 393 U.S. 23, 29 (1968) which has held that the Constitution is filled with provisions that grant Congress or the States specific power to legislate in certain areas. These granted powers are always subject to limitation that they may not be exercised in a way that violates other specific provisions of the Constitution.

So I think that what the Senator said and what we both agree on, apparently, is that although Congress creates the Federal courts and assigns them certain jurisdictions under cases that arise under the Constitution, Congress does not thereafter have a total and unrestricted authority to curtail that jurisdiction when such curtailment might violate other parts of the Constitution.

Mr. JOHNSTON. The Senator is entirely correct, but let me, at this point, point out that the right to bus or the duty to bus, should I say, was one that was created in—I believe the first case was Swann against Charlotte-Mecklenburg. It seems to me that was 1971. And Green against Board, I think, was 1969. Prior to that time, school busing or the assignment of students to schools other than that closest to their residence was not considered by the court to be a constitutional right. Brown against Board of Education dealt with desegregation and access to public schools.

It was only in those two cases and their progeny that this right and duty was discovered by the Supreme Court. Let me point out this central fact, though: The Supreme Court relied heavily on James Coleman's 1966 study on equal educational opportunity survey, also known as the Coleman report. What proof Coleman found was that black and white students do better in an integrated situation. So, using the findings of that study, the Supreme Court said, "We can help integration, we can help education by busing."

However, the overwhelming evidence accumulated since this brave experiment has been tried shows that precisely the opposite has resulted.

First, Mr. Coleman himself reversed himself, and in a recent study conducted by Mr. Coleman, he pointed out that busing does not help the educational experience but, rather, results in white flight from central cities.

The Senator will recall that, after Mr. Coleman came out with his second study criticizing busing, pointing out that it resulted in white flight, that, in turn, sparked a series of other studies. There are now hundreds of studies on the issue and almost all of them come to that same conclusion, that it has not worked.

The Armour study, by David J. Armour in 1978, is a study of court-ordered mandatory desegregation in large school districts with significant minority enrollment. He found precisely what I have pointed out, that school busing simply does not work; that it results in massive white flight.

In Boston, for example, in 1972, there were 57,000 whites. By 1977, it was down to 29,000. A decline about 60 percent—that is, 16,000 students—was due to the busing, according to the studies.

So, Mr. President, what we found is that the newly discovered right to bus, newly discovered in 1970 and 1971, has always been found not to work and not be effective.

Mr. President, I ask unanimous consent to have printed at this point in the RECORD a statement I delivered before the Judiciary Committee on this subject.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT OF THE HONORABLE J. BENNETT JOHNSTON

"THE NEIGHBORHOOD SCHOOL ACT"—INTRODUCTION

Mr. Chairman and distinguished members of the Committee, I am indeed pleased to have the privilege of appearing before you in support of S. 528, the "Neighborhood School Act of 1981", which would place reasonable limits on the amounts of busing that Federal Courts may order. I believe, and I am prepared to present evidence to support that belief, that mandatory court-ordered busing, used to excess, threatens the twin goals of desegregation and quality education.

THE NEIGHBORHOOD SCHOOL ACT

The Neighborhood School Act amends the "all writs" provision of section 1651 of Title 28 of the United States Code to specify that Congress intends to establish an exclusive framework for fashioning corrective school desegregation remedies. The corrective framework applies whether federal courts exercise powers to adjudicate school discrimination cases under the Constitution, a federal statute or common law.

There is no dearth of remedies to eliminate the "vestiges" of state-imposed segregation. However, the remedies least likely to guarantee Fourteenth Amendment rights to students are excessive involuntary assignment and transportation of students by court order. The Neighborhood School Act takes three new and unique approaches to these problems.

First, the Act puts time and distance limitations upon the busing to be ordered by a court. The total daily time consumed in travel by school bus by any student may not exceed by thirty minutes the time in travel to the school closest to the student's residence. In other words, courts would only have authority to require up to fifteen minutes one way on a school bus over and above the time necessary to get to and from the school closest to the student's residence.

The bill also puts a distance limitation of 10 miles round trip or five miles one way as the maximum additional distance beyond the school closest to the student's residence. Both the time and distance limitations are to be calculated by the route traveled by the school bus and not on the map.

A second provision of the bill prohibits court-ordered student assignments or busing where such orders are likely to result in a greater degree of racial imbalance or a net harmful effect on the quality of education.

The third feature of the bill is authorization of the Attorney General to enforce the rights guaranteed by the Neighborhood School Act. If a student is bused or about to be bused in violation of these provisions, the student or his parent can complain to the Attorney General. If he is financially unable to maintain the legal proceedings in his own right, the Attorney General is authorized in the name of the United States to vindicate his rights to the same extent as he is empowered to do with respect to school desegregation cases.

Specifically, section 2 of the bill contains a series of Congressional findings relative to the efficacy of busing as a desegregation remedy and concludes that the assignment

of students to their "neighborhood public school" is the "preferred method of public school attendance and should be employed to the maximum extent consistent with the Constitution of the United States." To implement this congressional policy, section 3 provides that:

"No court of the United States may order or issue any writ ordering directly or indirectly any student to be assigned or to be transported to a public school other than that which is nearest to the student's residence . . ."

An exception to this general prohibition is provided for transportation that is required by a student's attendance at a "magnet", vocational, technical, or other specialized instructional program that is "directly or primarily" related to an "educational purpose" or that is otherwise "reasonable". A transportation requirement could not be considered reasonable, however, if alternatives less onerous in terms of "time in travel, distance, danger, or inconvenience" are available. The cross-district busing of students would also be deemed unreasonable, as would a transportation plan that is "likely" to aggravate "racial imbalance" in the school system, or to have a "net harmful effect on the quality of education in the public school district." Most importantly, section 3 would make it unreasonable, and therefore bar the courts from ordering the transportation of any student that exceeds by thirty minutes or by ten miles the "total actual time" or "total actual round trip distance" required for a student's attendance at the "public school closest" to his or her residence.

The Neighborhood School Act relies on Congress' broad powers under section 5 of the Fourteenth Amendment to provide a framework within which violations of the Equal Protection Clause may be remedied. As such, the legislation does not preclude courts from determining whether State action violates the equal protection rights of individuals as students or from enjoining official policies of school construction or student assignment that result in the intentional separation of the races. The Act does not affect the authority of the courts to enforce remedies involving the reassignment of students between schools or the reformulations of attendance zones which do not place a greater burden on any affected child. Other commonly employed remedies—voluntary student transfers, the establishment of "magnet schools," and the remedial assignment of faculty and staff would continue to be available. Simply stated, what the Neighborhood School Act does is to recognize that conditions of segregation caused by unlawful State action can be effectively remedied without resort to coercive measures involving extensive reassignment and transportation of students under court order.

SCOPE OF CONGRESS' POWERS UNDER SECTION 5

There can be little doubt that the Neighborhood School Act is a legitimate exercise of Congressional prerogatives under § 5 of the Fourteenth Amendment which affirmatively grants to Congress the power to enforce "by appropriate legislation" equal protection and due process guarantees. The Court has long recognized the critical role of Congress in the enforcement of Fourteenth Amendment rights. The most recent and comprehensive discussions of Congress' § 5 powers are found in Katzenbach v. Morgan and Oregon v. Mitchell. In Morgan, the Court upheld § 4(c) of the Voting Rights Act of 1965, which invalidated a New York literacy requirement for voting as applied to Spanish-speaking Puerto Rican residents, despite the Court's own earlier refusal to find that State literacy requirements violated equal protection. Justice Brennan, writing for the majority, characterized § 5 as a broad grant of independent power to Congress to "determin(e) whether and what legislation is needed to secure the guarantees of the Fourteenth Amendment." Of particular significance was the Court's deference to Congress' judgment in framing remedies for constitutional violations:

"It was for Congress, as the branch that made this judgment, to assess and weigh the various conflicting considerations—the risk or pervasiveness of the discrimination in governmental service, the effectiveness of eliminating the State restriction on the right to vote as a means of dealing with the evil, the adequacy or availability of alternative remedies, and the nature and significance of the state interest that would be affected by the nullification of the English literacy requirement as applied to residents who have succesfully completed the sixth grade in a Puerto Rican school."

The remedial standards in S. 528 could hardly find firmer constitutional support than in Morgan's broad formulation of Congress' § 5 powers.

Oregon elaborated further on the scope of congressional authority to enforce the Fourteenth Amendment in a challenge to a provision of the 1970 Voting Rights Amendments granting 18-year olds the right to vote in State and Federal elections. While rejecting 5 to 4 the application of the act to State elections, Morgan's recognition of Congress' power to remedy State dentists of equal protection survived intact. Writing for the Court, Justice Black opined that "t(o) fulfill their goal of ending racial discrimination and to prevent direct or indirect state legislative encroachment on the rights guaranteed by the amendments, the Framers gave Congress power to enforce each of the Civil War Amendments. These enforcement powers are broad." Similarly, Justice Douglas concluded that "(t)he manner of enforcement involves discretion; but that discretion is largely entrusted to Congress, not to the courts." Stressing Congress' superior fact-finding competence, Justices Brennan, White, and Marshall urged judicial deference to congressional judgments regarding the "appropriate means" for remedying equal protection violations.

"The nature of the judicial process makes it an inappropriate forum for the determination of complex factual questions of the kind so often involved in constitutional adjudication. Courts, therefore, will overturn a legislative determination of a factual question only if the legislature's finding is so clearly wrong that it may be characterized as 'arbitrary,' 'irrational,' or 'unreasonable.'"

Finally, Justice Stewart, joined by the Chief Justice and Justice Blackmun, conceded equally broad § 5 powers to Congress to "provide the means of eradicating situations that amount to a violation of the Equal Protection Clause," and to impose on the States "remedies that elaborate upon the direct command of the Constitution."

Section 5 of the Fourteenth Amendment and its case law progeny thus provide clear support for the busing restrictions contained in S. 528. The emphasis in Morgan and Oregon on Congress' special legislative competence in balancing State interests against equal protection demands is significant, particularly in light of the findings in § 2 of the bill. Issues concerning the harms and benefits of busing for integration purposes certainly qualify as "complex factual questions" and their resolution by Congress commands judicial deference. Not only is Congress best equipped to hold hearings and conduct investigations to determine the facts, it is best able to "assess and weigh the various conflicting considerations" associated with busing. A recent study of the bill by the American Law Division of the Library of Congress reached this same conclusion:

"Of significance in evaluating these limits may be the language in the Swann decision which permits the district courts to deny busing when 'the time or distance of travel is so great as to risk either the health of the children or significantly impinge the educational process.' The Swann Court also acknowledged that the fashioning of remedies is a 'balancing process' requiring the collection and appraisal of facts and the 'weighing of competing interests', a seemingly appropriate occasion under Morgan for Congressional intervention. In addition, busing is only one remedy among several that have been recognized by both the courts and Congress to eliminate segregated public schools. Thus, the findings in § 2 of the bill relative to the harms of busing, particularly if supported by other evidence in congressional hearings or debate, may comport with the emphasis of Justice Brennan's opinion in Oregon on Congress's superior fact-finding competence, and therefore be entitled to judicial deference. By contrast, the dissenters in Morgan found § 4(e) of the Voting Rights Act failed to qualify as a remedial measure only because of the lack of a factual record or legislative findings."

These principles are particularly applicable here where Congress is not attempting to alter a substantive right under the Equal Protection Clause, but merely addressing remedies the courts may impose on segregated school districts.

The Neighborhood School Act in no way attempts to "restrict, abrogate, or dilute" the guarantees of the Equal Protection Clause in a fashion inconsistent with the Morgan and Oregon rationale. Nor would it result in a dilution of rights recognized by the Court any more than the expansion of the rights of Puerto Ricans in Morgan diluted, to some extent, the rights of English-speaking voters. The Act does not in any way promote the separation of races or the perpetuation of segregated public schools. Instead, by mandating judicial resort to remedies in the schools, the bill would effectively expand the rights of privacy and liberty of all students involved.

The Neighborhood School Act is not attempting to prescribe how the Court should decide a substantive issue. Nor does it purport to bind the Court to a decision based on an unconstitutional rule of law. S. 528 is entirely neutral on the merits of any asserted claim of a denial of equal protection effected by segregation. It is only after a decision is rendered mandating desegregation that the bill becomes operative, and then only to restrict the use of one remedy among alternative remedies. As stated by Professor Hart:

"The denial of any remedy is one thing . . . but the denial of one remedy while another is left open, or the substitution of one for another, is very different. It must be plain that Congress had a wide choice in the selection of remedies, and that a complaint about an action of this kind can rarely be of constitutional dimension."

Therefore, Congress' constitutionally vested powers to enforce the Fourteenth Amendment and to regulate the jurisdiction and forms of remedies of the courts of the United States provide ample support for the restrictions on the use of busing remedies prescribed by S. 528. Such legislative action, instead of constituting an intrusion into the judicial domain, is rather a healthy exercise of congressional powers in the political scheme envisioned by the Constitution. If the protective system of checks and balances is to retain its vitality in our constitutional system, congressionally legislated remedies for denials of equal protection must be accorded substantial deference by the courts. This is particularly true where, as in the case of S. 528, the enactment is strongly supported by provisions of the Constitution independent of the Equal Protection Clause. Congress is uniquely competent to determine the factors relevant to the right to a desegregated education, and in resolving the conflicting considerations concerning the

scope of remedies. Its judgment as to necessary restrictions on the use of busing as a remedy should thus be upheld.

BUSING HAS PROVED TO BE AN EXTREMELY UNPOPULAR AND INEFFECTIVE REMEDY

It is not the intent of this bill to turn back the clock. Congress remains committed to the cause of civil rights and to equal protection of the laws. But in the decade since busing came into general use as one of several tools for implementing court-ordered desegregation, Congress and the American people have learned some things about schools and our society that we did not know before. A body of information has been developed through the increasingly sophisticated techniques used by social scientists in examining our institutions. With this testimony I am submitting a bibliography prepared by the Congressional Research Service of 501 books and articles which have appeared on this subject since 1976. In preparation for these hearings, members of my staff have attempted to familiarize themselves with all major studies which deal with the issue of mandatory busing; copies of those we believe to be the most significant are available for your consideration. You can see from this mass of material that refinements in gathering and interpreting statistics and designing projection models have brought us to a point in history where, to paraphrase Marshall McLuhan, the measurement is the message: it is becoming increasingly clear that people perceive mandatory, court-ordered busing as harmful, both to children and to the concept of quality education, that they act on these perceptions and that their actions effectively nullify the objective of court orders by increasing white flight and the resegregation of schools.

FINDINGS ON THE POLLS

If there is a single conclusion which can be drawn from the polls about public attitudes toward busing, it is that a very large percentage of the American people opposes it. For example, the same question was asked by the National Opinion Research Center (NORC) at the University of Chicago yearly between 1970 and 1978. The question read: "In general, do you favor or oppose the busing of (Negro/Black) and white children from one district to another." The percentage of persons opposing such busing in this nine year span never dropped below 75 percent. Other surveys taken over the last decade show a remarkable consistency in attitude:

From the Gallup Poll (October 8–11, 1971):

In general, do you favor or oppose the busing of Negro and white school children from one school district to another?

Favor, 17 percent. Oppose, 77 percent.

From the Harris Survey (March, May, August 1972):

Would you favor or oppose busing school children to achieve racial balance?

March: Favor, 20 percent; Oppose, 77 percent.

May: Favor, 14 percent; Oppose, 81 percent.

August: Favor, 18 percent; Oppose, 76 percent.

From the Gallup Poll (November 1974):

I favor busing school children to achieve better racial balance in schools.

Favor, 35 percent. Oppose, 65 percent.

From the Gallup Poll (May 31, 1975):

Do you favor busing of school children for the purpose of racial integration or should busing for this purpose be prohibited through a constitutional amendment?

Favor, 18 percent. Prohibit, 72 percent.

From the Harris Survey (July 8, 1976):

Do you favor or oppose busing children to schools outside your neighborhood to achieve racial integration?

All: Favor, 14 percent; Oppose, 81 percent.

Whites: Favor: 9 percent; Oppose 85 percent.

Blacks: Favor: 38 percent; Oppose, 51 percent.

From the CBS News Poll (August 22, 1978):

What about busing? Has that had a good effect, a bad effect or no effect at all on the education of the children involved?

[In percent]

	All	Parents	White	Black
Good	12	12	9	35
Bad	50	48	54	27
No effect	18	20	18	19
Depends	5	4	4	7
No opinion	15	10	15	12

From the California Poll (conducted statewide throughout California, September 21, 1979):

Do you favor or oppose school busing to achieve racial balance?

[In percent]

	Favor strongly	Favor moderately	Oppose moderately	Oppose strongly
State	8	10	18	60
Whites	5	8	19	64
Blacks	31	19	16	32
Hispanics	12	12	16	57

From the Gallup Poll (February 5, 1981):

Do you favor or oppose busing to achieve a better racial balance in the schools?

[In percent]

	Favor	Oppose	No opinion
National	22	72	6
White	17	78	5
Black	60	30	10

Boston has experienced six years of court-ordered busing. In the Globe poll of June 2 and 3, 1980, citizens of Greater Boston were asked:

Has court-ordered busing in Boston's public schools generally resulted in better or worse education for black children?

[In percent]

	Better	Worse	Not much effect	Do not know
Greater Boston	17	28	36	19
Whites	16	29	36	19
Blacks (Boston)	18	10	56	16

Would you prefer to spend tax money to improve public schools in largely black neighborhoods, or have black children transported to schools in largely white neighborhoods?

[In percent]

	Improve	Transport	Do not know
Greater Boston	80	10	10
Whites	80	9	11
Blacks	81	9	10

Los Angeles experienced two years of state-mandated busing. In the Los Angeles Times poll of November 9–13, 1980, Los Angeles residents were asked:

Do you approve or disapprove of forced busing to achieve racial integration?

Approve, 18 percent. Disapprove, 75 percent. Not sure/refused, 7 percent.

In a special election of November 1979, California voters by a two to one majority approved an amendment to the California constitution ending state-mandated busing. You are probably aware that the Supreme Court of California upheld its constitutionality on March 11 of this year, and on April 17, the Court of Appeals permitted local officials to dismantle the busing program in Los Angeles, allowing children to return to their local schools.

It must be emphasized that most Americans, black and white, support the idea of equality of educational opportunity. The same polls which indicate the pervasive dislike of mandatory busing show a high level of support for genuinely integrated schools, those in which there are substantial opportunities for contact between majority and minority students.

Gary Orfield, author of the extensive study Must We Bus? and himself a supporter of mandatory busing, concedes that increasing white support for integrated schools has been a clear pattern in studies of public opinion over the decades. He specifically cites a series of Gallup Polls done between 1959 and 1975 which indicate dwindling public opposition, especially in the South during the 1960's, the region and the period in which massive integration was concentrated. (Gary Orfield. Must We Bus? Segregated Schools and National Policy. 1978. p. 109)

WHITE FLIGHT: THE COLEMAN CONTROVERSY

When a large number of white pupils leaves a public school system, the resultant pupil mix can be so heavily tilted toward minorities that desegregation is no longer possible. This is the "white flight" phenomenon identified by Dr. James S. Coleman and described in his Urban Institute paper Trends in School Segregation 1968–73. It had long been known that middle-class families had been moving out from the large older cities into suburbs, leaving urban school districts with increased percentages of minority students, but Coleman was the first to indicate that school desegregation contributed significantly to the declining white enrollman's massive 1966 study, the Equal Educational Opportunity Survey (known as the Coleman Report), had provided the rationale for the use of busing as a tool to promote desegregation, and proponents of activist desegregation policies attacked him bitterly. In August of 1975, a Symposium on School Desegregation and White Flight was convened, funded by the National Institute of Education and hosted by The Brookings Institution. Although Coleman was a participant, the papers which emerged from the conference consisted entirely of rebuttals of his position. Reynolds Farley criticized his findings, and his claim that desegregation accelerated white flight was denounced by Robert Green of Michigan State and Thomas Pettigrew of Harvard who charged that Coleman had been selective in his choice of school districts and that their own reanalysis revealed no correlation.

There were three major criticisms of Coleman's study: that his conclusions were invalid because he did not look at enough districts; that "white flight" from central cities is a long-term phenomenon independent of desegregation; and that desegregation does not cause it because the same level of loss can be observed in cities whether or not they have court-ordered desegregation.

The most serious challenge to Coleman's findings was mounted by Christine Rossell whose own study, she held, demonstrated that school desegregation causes "little or no significant white flight, even when it is court-ordered and implemented in large cities." She said that her data contradicted almost every claim Coleman had made. But Rossell's later and more detailed analyses yielded results consistent with Coleman's. In fact, both Rossell and Farley have admitted publicly that Coleman's original findings were essentially correct; Pettigrew and Green, whose critique relied heavily on the original Farley and Rossell studies, have not been heard from. Contrary to popular

and even, in some cases, scholarly opinion, Coleman's 1975 report has not been discredited, although the agencies which expedited publication of the early critiques, the National Institute for Education, Brookings and the Harvard Educational Review, have been slow to publicize the later studies establishing his credibility.

WHITE FLIGHT: THE ARMOR STUDY

David J. Armor's 1978 study of court-ordered mandatory desegregation in large (over 20,000) school districts with a significant minority enrollment uses a demographic projection technique to estimate what the white enrollment would have been in the absence of desegregation. Armor found massive white flight: A substantial (double the rate projected as normal) anticipatory effect in the year before busing was to begin; a first-year effect four times as great; and a long-term effect four years later of twice the projected rate of loss. In the majority of districts, half the white loss over a 6-8 year period is due to court-ordered desegregation efforts. White flight accelerates the "tipping" process by which minorities become the majority in a school district and desegregation becomes resegregation:

"Before the desegregation action in Boston (1972), there were 57,000 white students but by 1977, there were only 29,000. Of this total decline of 28,000, about 16,000 (or three fifths) is attributable to desegregation activities. As a direct result of court-ordered busing, Boston became a majority black school district in 1975. It is interesting to note, also, that minority enrollment stopped growing rather suddenly in 1975 . . . This shows that black flight—which has not been studied—may also be a phenomenon in court-ordered desegregation . . ."—David J. Armor. White Flight, Demographic Transition and the Future of School Desegregation. The Rand Corp. August 1978. p. 24.

Statistics for various school districts undergoing court-ordered desegregation involving some degree of busing show substantial declines in white enrollment. The Los Angeles Times reported that between the fall of 1979 and the fall of 1980 (when the Los Angeles desegregation plan was extended to more grades than before), white enrollment in the Los Angeles school district dropped by 18,515 students or 12.8 percent. Minority enrollment grew by 1.2 percent. (Los Angeles Times, October 2, 1980). St. Louis offers an example of significant white enrollment losses between 1979 and 1980 (when mandatory reassignment of some students began). In the fall of 1979, non-black enrollment was 16,444. By the fall of 1980 that number had dropped to 13,244, a loss of 21 percent. (Data provided by analyst on the staff of the St. Louis School Board.)

Armor cautions that the white flight phenomenon comprises more than relocation of family residence:

". . . there are three major processes which can give rise to white flight from public schools: (1) residential relocation outside the district; (2) transfer of children from public to private schools; and (3) failure of new area residents to replace regular outmigrants who are leaving the area for reasons unrelated to desegregation . . . some white flight effects are manifested by the slowing down of white growth rather than the acceleration of white decline."—Armor (1978) p. 15.

In metropolitan desegregation cases, he indicates, "private school transfers may well comprise a significant portion of white losses." In my own state of Louisiana, a court-ordered busing plan last year resulted in the establishment of a private school in Rapides Parish. Interestingly, the private school has black and white students as well as black and white teachers.

Armor concludes that "court-ordered desegregation, coupled with normal demographic trends, is producing increasing ethnic and racial isolation in many larger school districts. If this trend is to be stopped or reversed, other remedies need to be considered."

ALTERNATIVES TO BUSING

Other remedies do exist. Armor, discussing San Diego, states that voluntary methods worked well in that case, and may offer a viable alternative to busing in larger cities. Innovative programs, such as the extended day program in the Mary E. Philips Magnet School in Raleigh, N.C., achieve their purpose of voluntary integration while meeting the needs of single parents, working couples and their children. ("Extended Day Program in a Public Elementary School." Children Today. May-June 1979. p. 6-9).

The polarizing nature of busing plans and their requisite expense deflect attention and energy from the issue of educational quality. Improving the quality of the schools may well serve to desegregate those schools and their neighborhood, voluntarily, more permanently and with less tension, than is possible with pupil reassignment.

In some districts, the desegregation of the schools has not become a principal objective of either the white or black communities. David L. Kirp, in analyzing the history of the Oakland (California) school system over the past two decades, found that the issue of desegregation was handled politically within the district and was not taken into the courts. "As a result, race and schooling politics in Oakland—including current disinterest in desegregation—reflect the popular will as well as any politically derived solution may be said to do so." ("Race, Schooling and Interest Politics: The Oakland Story." School Review. August 1979. p. 307). The outcome was largely a reallocation of money and power within the school system, securing for Oakland's black community a "measure of distributive justice."

Other urban school districts are seeking to improve their educational facilities, increase minority hiring and develop magnet schools instead of attempting to desegregate mandatorily student enrollment.

"The theory of Atlanta's educational leaders is that equal educational opportunity can be achieved through high quality education. If they are right, and if they can create the kind of productive, effective schools that all parents want, the system could become a showplace for urban American schools and a magnet pulling back the children of those who fled the city during the past two decades."—Diane Ravitch. "The 'White Flight' Controversy." Public Interest. Spring 1978. p. 149.

The alternatives to mandatory busing for desegregation include the development of magnet schools (schools established with special programs and curricula designed to attract students of all races), open enrollment policies, and majority to minority transfers (students of a majority race at one school are permitted to transfer to schools where they will be in the minority).

On May 4, 1981, the Department of Justice proposed a plan for desegregating schools in the city of St. Louis which would reward students who voluntarily transferred between black inner-city schools and white suburban schools with a free college education at a state university or college. The proposal tacitly concedes that further busing and court-ordered desegregation plans would be counterproductive in producing truly integrated schools in St. Louis.

ALTERNATIVE LEGISLATIVE APPROACHES WILL NOT WORK

Unlike other legislative proposals in the Senate and the House, the Neighborhood School Act does not run the same constitutional risks.

A. The "Student Freedom of Choice Act"—S. 1005:

Senator Helms and others would attempt to give students "freedom of choice" in selecting any school in their public school district, including the school closest to the student's residence. Senator Helms would do so by limiting the jurisdiction of federal courts to do otherwise. The operative language of his bill is found in section 1207 as follows:

"No court of the United States shall have jurisdiction to make any decision, enter any judgment, or issue any order requiring any school board to make any change in the racial composition of the student body at any public school or in any class at any public school to which students are assigned in conformity with a freedom of choice system. . ."

Article III, section 1, of the Constitution grants the Congress power to create courts inferior to the Supreme Court and to provide for their jurisdictions. S. 1005 reasons, in effect, that since Congress has the power to create or abolish courts and to grant, withhold or revoke jurisdiction, it has the lesser power to grant or deny remedies to Federal courts or to minimally alter some of their equitable remedies.

In an exhaustive law review article entitled "Congressional Power to Restrict the Jurisdiction of the Lower Federal Courts and the Problem of School Busing," 46 Georgetown Law Journal 839 (1976) Professor Ronald D. Rotunda concluded:

"Congress asserted power to abolish any or all of the lower federal courts does not include the authority to engage in narrow, individualized, interstitial removal of jurisdiction. Because both the due process clause of the Fifth Amendment and various provisions within Article III restrict congressional power to limit jurisdiction of the federal courts, the proper test of constitutionality is whether the withdrawal affects substantive constitutional rights. Under this test, Congress cannot use a jurisdictional limitation to restrict a substantive right. Congressional attempts to prohibit busing only in those cases where Congress thinks the lower court has erred would violate Article III by imposing a rule of decision on particular cases. Any broader anti-busing statute would violate the due process clause of the Fifth Amendment by forbidding busing even when it is the only means of enforcing the constitutional right to integrated schools."

B. The "Racially Neutral School Assignment Act"—S. 1147:

Senator Gorton's bill, the "Racially Neutral School Assignment Act", would preclude any assignment of any student to any school which occurs in a race conscious manner. In effect, both the school boards and the federal courts would be required to ignore the race of a student for making school assignments in every circumstance. Furthermore, no court could order the assignment of a student to a school other than a school closest to the student's residence and which provides "an appropriate grade level and type of education for the student."

Senator Gorton's bill flies in the face of Swann and a host of other decisions which established the requirement that school authorities are "clearly charged with the affirmative duty to take whatever steps might be necessary to convert to a unitary system in which racial discrimination would be eliminated root and branch." Swann requires that where there is racial imbalance in public schools brought about by discriminatory state action that there be race consciousness in dismantling the dual school system. Swann specifically requires busing where necessary and stated "we find no basis for holding that the local school authorities may

not be required to employ bus transportation as one tool of desegregation." 402 U.S. at 30.

Furthermore, the Court has suggested that the "assignment of students on a racial basis" is indispensable to the decisions and judgments in desegregation cases. In McDaniel v Barresi, 402 U.S. 39, 41 (1970), the Court concluded that "(any) other approach would freeze the status quo that is the very target of all desegregation processes."

CONCLUSION

Over the past ten years, however, busing has become the judicial instrument of choice. In many instances courts have issued busing orders which they knew would not work and which they knew would result in white flight because they felt compelled by prior decisions to do so.

The studies of Coleman and Armor represent a demographic finding of fact. In 1971, the Supreme Court prescribed a legal remedy, busing, for what it had identified as a social malady, a failure to provide equality of educational opportunity. But the remedy when applied produced a crippling side effect: resegregated public schools with fewer students overall in attendance. If a doctor were to discover that the medicine he had given a patient had, instead of curing the patient, produced an unexpected and serious reaction, he would stop the medication and attempt to find a safer, more effective treatment. If he didn't change the medication and the patient died, you can bet that someone would sue him for malpractice.

The medication now being prescribed by the Court for the patient has proven to cause more harm than the disease itself. Senators Helms and Gorton, on the other hand, do not prescribe any medication at all for the patient's affliction and prefer the patient to continue in pain without relief. The Neighborhood School Act, however, recognizes that medication can in fact relieve the patient's constitutional affliction. The Act does not prescribe twenty aspirin where only two will heal. In effect, the Neighborhood School Act acts as a good doctor by prescribing sufficient medication to give the patient relief, but not too much to kill him.

Nobody is going to sue the Congress for malpractice, but that doesn't lessen our responsibilities to the American people. A mistake has been made, and now that we are aware of the damage that has been done, we have an obligation to correct it.

Mr. JOHNSTON. Are there further questions?

Mr. President, I should like to point out one thing—the opinion of the American people with respect to busing.

I recognize that constitutional rights and minority rights cannot be subject to a plebiscite, cannot be denied by the "to's" and "fro's" of opinion polls. However, the opinion of people with respect to busing becomes the fact insofar as the workability of that remedy is concerned. When the American people, in overwhelming numbers, disapprove of busing it is a fact that should be considered by both Congress and the courts.

If there is a single conclusion which can be drawn from the studies about public attitudes toward busing, it is that a very large percentage of the American people oppose it.

For example, there have been opinion polls yearly between 1970 and 1978, and the percentage of those opposing busing never fell below 72 percent.

For example, Gallup in 1971, 77 percent opposed; Harris in 1972, between 76 and 81 percent; Gallup in 1975, 72 percent opposed; Harris in 1976, 81 percent opposed; Gallup in 1981, 72 percent opposed.

The effective opinion expresed in the California poll of September 1979, in which 78 percent opposed busing, has already been translated into law. In November 1979, the voters approved an amendment to the California constitution ending State-mandated busing.

In Boston, after 6 years of court-ordered busing, the Boston Globe poll of June 2 and 3, 1980, indicated that, by a 4 to 1 majority, both blacks and whites said they preferred to improve the schools rather than to bus children.

The interesting thing is that many of these polls also asked the correlative question as to whether or not people approve of integrated education. By overwhelming numbers, they did. The American is not saying that they want to turn back the clock and resegregate the schools; nor are we saying, in sponsoring this amendment, that we want to turn back the clock and resegregate the schools.

To the contrary, the authors of this amendment have the same commitment to integrated education that the American people have, but we also have the same commitment to oppose busing that the American people, by more than 70 percent, consistently oppose busing.

Mr. HATCH addressed the Chair.

Mr. JOHNSTON. Does the Senator want the floor, or does he wish me to yield for a question?

Mr. HATCH. I should like to make some remarks.

Mr. JOHNSTON. I yield the floor.

The PRESIDING OFFICER (Mr. KASTEN). The Senator from Utah.

Mr. HATCH. Mr. President, I appreciate the intelligent approach that the distinguished Senator from Louisiana has taken through the years toward trying to resolve this serious dilemma in America. I appreciate his willingness to work with me in trying to come up with some solution that will ultimately produce a reasonable approach to this problem, which has become a monumental problem in America.

Mr. President, during the 5 days of hearings on the subject of "school busing and the 14th amendment" held by the Constitution Subcommittee, Prof. Lino A. Graglia, constitutional law professor at the University of Texas, offered a concise formulation of the problem now before the Senate. He stated:

This is an area in which what the courts say they are doing and what they do in fact are often two quite different things. It is an area in which words are often used to mean the opposite of what they are ordinarily understood to mean; for example, a constitutional prohibition of the assignment of children to school on the basis of race can turn out to be a constitutional requirement that children be assigned to school on the basis of race.

Since the momentous Brown decision in 1954, the Constitution, in theory at least, has prohibited segregation compelled by law. In other words, schoolchildren must be assigned to schools without any regard to their race. To use a familiar phrase, the Constitution is color blind. Each student or citizen is to have equal consideration regardless of his race.

Congress put this noble policy into effect with the Civil Rights Act of 1964. The 1964 act explicitly states that "desegregation" is "the assignment of students to public schools and within such schools without regard to their race."

Unfortunately, as Professor Graglia notes, the Federal courts have not carried out the intent of the Constitution or Congress. Instead of considering each child in a school district as merely a student, Federal courts have divided students into two classes, black students and white students. When they find the numerical ratio between the classes unsatisfactory, some black students or some white students will be hauled to a distant school away from their past friends simply because they are black or white. I submit, Mr. President, that this notion of numerical or statisical justice is no justice at all. It is precisely the injustice that the Brown case and the 1964 Civil Rights Act were supposed to have terminated. We are not going to put an end to racial discrimination by perpetuating distinctions based on race. School busing is nothing more than assigning children to public schools on the basis of race. I repeat, Mr. President, we cannot end discrimination by discriminating.

The Senate has discussed before the ill effects of this discriminatory school busing policy. I will mention only in passing that the hearings in the Constitution Subcommittee have substantiated that mandatory busing is defeating its own purpose by creating in fact greater separation between the races; that busing disrupts social peace and racial harmony; that it seriously interferes with private (and constitutionally protected) decisions of parents to educate their children as they please; and that it diverts resources which could otherwise improve the quality of public education. Still, most important in my mind, it is inconsistent with constitutional guarantees that individual rights shall not be abridged on the basis of race, color, or national origin.

This brings me to the reasons that I feel the Johnston amendment is not adequate to solve this problem. In the first place, the amendment admits that the pursuit of "racial balance * * * is without constitutional or social justification." With this statement, as already noted, I wholeheartedly agree. Forced busing to achieve an amorphous concept of racial balance is discrimination on the basis of race, which is repugnant to the Constitution. Yet the amendment proceeds to authorize the practice within distance limits of 10 miles and time limits of 30 minutes round trip. Thus, if a student lives within those limits, he can still be bused simply because he is black or white. In other words, students can be discriminated against on the basis of where they live as well as their race and color.

Moreover, the Johnston amendment underestimates the resourcefulness of courts to construct exceptions and loopholes through which to drive school buses. Such simple prohibitions as are found in Brown and the 1964 act against

consideration of race have been stretched into racial balance busing schemes. Therefore, I can easily foresee the words of the Johnston amendment about the school that would normally be attended and the time and distance limits coming back from the bench as an authorization of Congress for expanded busing. However, I do not believe that is the intent, and I know that is not the intent of Senator JOHNSTON or of anybody else in the Chamber.

As I have mentioned before, however, I am not entirely comfortable that this amendment is even before the Senate. In my Constitution Subcommittee we have held five hearings on this subject area—two on busing itself, three on Federal court jurisdiction restrictions. When a committee is making no effiort to act on legislation, I can see the justification for taking the issue directly to the floor for some, albeit hasty, consideration. This is not, however, such an instance. Not only has my subcommittee held extensive hearings, the Separation of Powers Subcommittee has examined busing in hearings.

We need time to consider in detail proposals such as this Johnston amendment. We should examine carefully whether this approach will encourage rather than remedy white flight, for instance. This proposal may have misjudged the determination of parents to withdraw their children from schools impacted by racial balancing schemes. This proposal could set up virtual "no man's lands" on the borders of the geographical boundaries set by the 10 mile requirement. It could cause more racial dislocation than now exists. We need to consider that question in the reasoned atmosphere of hearings with expert witnesses to advise the Senate about the consequences of its actions. That hearing process, as I have stated, is underway, and well underway.

Due to my serious reservations about this Johnston amendment, I am enthusiastic about agreeing with my colleague to have a bill to finally return to a completely nondiscriminatory policy before the Senate for a vote within 30 davs. Moreover, I am pleased to encourage the Senate to make that agreement binding in the form of a resolution which we can attach to this Justice Department authorization bill, S. 951.

As chairman of the Constitution Subcommittee, I will insure that our subcommittee reports legislation with sufficient leadtime to comply with this resolution. Already the subcommittee has held 2 days of hearings on the school busing controversy and another 3 days of hearings on the merits of withdrawing lower Federal court jurisdiction under article III of the Constitution. Understanding the urgency of complying with the agreement embodied in this resolution and the urgency of resolving the entire process of discriminatory busing before the conclusion of the student's summer recess, the Constitution Subcommittee will meet its obligation to the Senate and to the students of the Nation.

We will work very hard with Senator EAST's Subcommittee on Separation of Powers, of which I also am a member, to try to resolve these problems. Senator EAST is very capable and certainly will do everything in his power, I am sure, to assist in this effort.

Mr. President, I express my gratitude to Senator HELMS for bringing the busing question to the attention of the Senate with his amendment and to Senator JOHNSTON for his role in setting up this agreement. I believe Senator JOHNSTON has worked long and hard to try to resolve these problems because he has some horrendous difficulties in his State, particularly in and around the city of Shreveport.

I believe that both these Senators and all other Senators—such as Senator ROTH, Senator GORTON, Senator BIDEN, and others—may be confident that their special recommendations for a final resolution of the busing problem will receive full consideration in the Subcommittee on the Constitution and the Subcommittee on Separation of Powers. When we report a measure in 30 days or less, our final product will be stronger for the slight pause to consider the implications of all the testimony and recommendations. Already in the few brief months of the 97th Congress, we have had more hearings on the school busing controversy than were held for years. Those efforts and the diligent work of the Senators on the floor today will soon bear fruit under the 30-day agreement.

Although I agree with Senator JOHNSTON's characterization of this amendment as being temporary in the sense that we intend to bring out a more comprehensive bill on this subject hopefully which will be a consensus bill, this amendment, if enacted, will become law at least during the lifetime of this authorization bill. This Johnston amendment is a step in the right direction, although I do raise these concerns and I have only raised a few of the concerns that have bothered those of us who deal with the Constitution almost on a daily basis in our subcommittee.

On the other hand, with the understanding that everyone should understand that we are going to work together, and that Senator JOHNSTON, my colleague from Louisiana, has agreed to work with us in trying to arrive at a definitive conclusion and consensus amendment, I am happy to support this amendment on the basis of what has been said here today.

I trust we can solve this problem completely in later legislation. I do not think anyone is well served by the law or the situation as it presently exists. The courts are not the appropriate branch of Government to legislate in this area and, unfortunately, they have done a lot of legislating in this area. I think it is time to do what we know has to be done to end discrimination and be fair and reasonable to the children of this Nation.

Although others may have sound opinions differing from my own, I for one am going to work very hard to come up with a bill that might put this controversy to rest at least for the remainder of our lives. One never knows. We have had many bills and amendments around here; sometimes they work and sometimes they do not. I do have concerns about the Johnston amendment's ability to resolve this crisis, but until we get the other bill out this amendment has merit as a temporary remedy for discriminatory busing.

I yield the floor.

Mr. JOHNSTON. Mr. President, I thank the distinguished Senator and I thank him for his cooperation along with the Senator from North Carolina (Mr. HELMS), the Senator from North Carolina (Mr. EAST), as well as their competent staff and those of the Judiciary Committee.

It is a most complicated and difficult subject. There are no final and full answers because many of these murky constitutional areas have not been fully explored by the courts. It is a leap of faith to try to design an amendment which achieves the result which we all want and yet will pass muster constitutionally. I believe that this amendment will do so.

I also believe that further hearings and further consideration in the Judiciary Committee can improve on this result as well, and I will indeed work with the distinguished Senator from Utah in trying to fashion a more definitive approach to the bill. In the meantime this is not temporarily legislation with an expiration date but it is legislation which will do the job until we can do something that is even better.

Mr. HATCH. I agree. The provision in here to allot 30 days certainly to come up with new legislation and to bring it to the floor I think is a wise provision. It should have passed and I think we can hopefully within that time arrive at definitive conclusions.

Mr. STENNIS. Does the Senator yield the floor?

Mr. HATCH. I yield, and I thank my friend from Mississippi for allowing me to make these remarks.

Mr. STENNIS. I thank the Senator for the time he used.

Mr. President, am I recognized?

The PRESIDING OFFICER (Mr. COCHRAN). The Senator from Miss'ssippi.

Mr. STENNIS. I thank the Chair.

Mr. President, I thank the Senator from Louisiana who is the main proponent of this amendment itself which I have joined in and thank the Senator from Utah for his splendid work in this field where he has a special and highly important committee assignment. In fact, this whole subject matter of school busing is now, in the light of new developments and experience of a few year, has taken on a very advanced viewpoint which is developing here progressively and in a fine way, being better understood and will be better practiced. Good has come from the new system already in a large degree.

Several years ago, I wish to refer to the fact that I introduced a very simple amendment in this field of integration of schools which was not immediately at the minute understood and led to criticism of my motives, but when the debate was over the amendment passed by a rather sizeable margin. My amendment was just a few lines long and said that the Department shall apply a uni-

form pattern throughout the 50 States with reference to the integration of the schools. That is all it said. And it stood up to quite a tussle and a good deal of noise, but it passed by a large vote. The major parts of it survived the conference, and that amendment was cited and quoted in part by the Supreme Court of the United States within the last 12 months I think it was, or recently anyway, as it relates to this problem.

I do not claim any credit for that. I had an unpublished report, an unpublished survey that gave the facts and figures for each of those 50 States which showed the reflection of the pattern with reference to integration of public schools and showed it was being done on a sectional or regional basis.

That amendment becoming law outlawed such a pattern and led to new steps forward.

I talked to the Senator from Louisiana about this amendment before and commended him very highly for his thought of not trying to outlaw the busing of children for integration because of racial patterns, but merely to regulate. The Supreme Court has rather firmly and definitely set up the constitutional grounds, basis, and foundation for the busing. So he conceived the idea of not trying to abolish it but to try to proscribe it, limit it, regulate it and bring it within the parameters of reason and commonsense. And in that way it is a great step forward for the pattern of integration. This amendment does not try to abolish or curtail the integration of schools, not in the least. To the contrary, it paves the way there for a more effective pattern, conclusions, and practices of doing the very matter of integrating the schools, with the result that great sums of money, literally billions of dollars, over time will be made available to pay for the operation of the school inside the classroom, one might say, to pay better salaries for the teachers, to pay for better accommodations, to pay this, that, and everything that is necessary to the educational part that goes to make up the school life, rather than expending these terrible sums of money in places by the unnecessary long distance and complicated busing patterns.

So it is encouraging in every way as we see the chance here to move forward in this field where the price of education is becoming more and more, of course, in some ways with the limited productivity, limited sums of money that can be exacted to pay taxes.

The vote in the House of Representatives just a few days ago in this same field shows the unmistakable judgment now in the light of this experience we have had in the last few years what is now sound, accepted, and desired by the people, the parents and the children themselves for a more orderly pattern for the integration and for the busing of the children.

Basically I have always felt that the neighborhood school is part of the neighborhood, and it is part of American fundamental constitutional rights. If the parents want the children to go to the neighborhood school, then they have the fundamental right. That is where to do so. That is where the churches are. That is where the social life is. That is where the workday is, so to speak, and everything about American life centers around and I hope and pray it will always to a large degree center around that community. Now to take the children out and carry them off somewhere else into another community not only robs them of that basic right of them and their parents but it takes from them their best chance to get an understanding of life and an understanding of the books, too.

Mr. JOHNSTON. Mr. President, will the Senator yield at that point?

Mr. STENNIS. I am glad to yield to the Senator.

Mr. JOHNSTON. Mr. President, I am glad the Senator made that point because one of the underlying theses of this amendment, the Neighborhood School Act of 1981, is the importance of parents' access to the public schools. We have found through the years that it is through the PTA's, through the parents participating in school activities, supporting the schools, being there and having that community support that schools flourish and move forward.

So by putting limitations here, 15 minutes and 5 miles, we guarantee that the school will be within that time and distance access that will make it possible for parents to be close to their children, and without this kind of limitation the courts have not insured that access.

For example, in East Baton Rouge Parish we found that over half the schools in the elementary level in the court order just recently issued, yet to be implemented, over half of those children are bused at distances which exceed by a great distance the amount provided here. As a matter of fact, out of 76 elementary schools I believe it is 38 or 39 which exceed these limitations and in fact require busing exceeding an hour. This is not only wasteful of the students time, requiring young students to be on school buses for that long, but it takes them out of their neighborhood, out of the area of their family, and it puts them far beyond the reach of parents to participate in the PTA and in other school activities.

So I thank the Senator for making that point which was so important to the Neighborhood School Act of 1981.

Mr. STENNIS. I thank the Senator for his remarks.

I did not have to read anything in a book from any survey that anyone had made or an opinion that someone else had given. I have this knowledge and see these things happen and reach these conclusions because of where I have lived and conditions there, and I never have lived in any other county. I know what the day-to-day life is and what the problems are and I know the progress that has been made and I know, also, of what some of the children and the parents had to give up and what being taken away from their community meant, and the way to solve these matters is now, regardless of what was the truth in the old days and my friend here from Connecticut I have great respect to him and I listened to his arguments over and over, he is sincere, he is able, and knowledgeable in every way and he covers the ground he stands on but in this matter that related to these neighborhood schools and the so-called matters that go along with heavy mixing of the people, the races or whatever you want to call it, I am the product of experience there, and I am proud of the progress that we have made. I cherish the gifts that have been made there at some of these schools, the vocational shops that send me little things that they make themselves, and so I know where the problems are.

And I am very happy that something in this direction as on foot. There is no trickery in this; there is no bombs in it. It is reality. It is life. I believe we are going to make some headway.

Mr. President, I am pleased to cosponsor the amendment proposed to S. 951 by the distinguished Senator from Louisiana (Mr. JOHNSTON). I support it strongly. I want to again commend the able Senator from Louisiana highly on the fine work that he has done in fashioning this amendment and bringing it before the Senate. It offers a logical and reasonable solution to a problem which has plagued this Nation for several years.

I support this amendment because I strongly believe that mandatory busing for the sole purpose of bringing about racial balance is unproductive and drains our finances and other valuable resources. In addition, it tramples upon and ignores the basic and fundamental right of children to attend a neighborhood school in their own communities. It is now crystal clear, Mr. President, that there is a great and pressing need to resort to approaches other than busing to bring about adequate, equal, and effective educational opportunities. Mandatory busing has not been fully effective, either from a racial or an educational standpoint, and in many cases it has proved to be counterproductive. The Johnston amendment addresses itself squarely to these issues.

The amendment would establish reasonable limits on the power of courts to require busing. For this purpose it prohibits the assignment or transportation of students to public schools other than the one closest to their residence for the purpose of achieving racial balance if there are "reasonable alternatives available which involve less time and travel, distance, danger, or inconvenience." The amendment also prohibits courts from ordering busing if the actual time or distance exceeds by 30 minutes or 10 miles, respectively, the ride to the school closest to the student's residence.

Survey after survey has shown that the American public opposes mandatory busing. Sociologists and educational experts have long since reached a consensus that extensive busing of students solely for the purpose of desegregating schools exacerbates the social and racial problems and accelerates the flight of whites from urban areas. More and more educational experts, sociologists, civil rights leaders, and policymakers are concluding that mandatory busing is not only costly and educationally disruptive but, more often than not, it fails to achieve any substantial part of its objective.

Forced busing, Mr. President, is very costly. Its enormous and endless expense results in the waste of our finances and other resources. In addition, it has undermined our educational process and is destroying confidence in the public education system.

We have expended enormous sums of money over the past several years for the sole purpose of busing our school children for long distances for the purpose of achieving so-called racial balance. The billions of dollars which have been needlessly expended in the acquisition and maintenance of buses, the purchase of gasoline, parts and supplies, the payment of the salaries of the drivers, mechanics, and other personnel, and the payment of other expenses of busing have in large measure been wasted. This money could have been expended with far better results in enhancing, improving, and enriching the educational program by employing more and better teachers, purchasing needed books, supplies, and equipment, constructing school buildings and other facilities, and in otherwise bettering and building up our school systems. The waste of funds and other resources which has resulted from forced busing is truly tragic.

Finally, Mr. President, the forced busing of children has trampled upon the basic, fundamental, and constitutional rights of children to attend schools in their own communities, and upon the rights of parents to have their children attend neighborhood schools. The transportation of school children, many of a tender age, for long distances from their homes to distant schools has caused inconvenience and hardship far out of proportion to the benefits which have ensued.

The pursuit of racial balance in public schools at any cost is without constitutional or educational justification. The assignment and busing of children to public schools to achieve such racial balance has been greatly overused. It is, as I have already pointed out, in many instances educationally and socially unsound and has caused the racial segregation and separation of students to a greater degree than would have otherwise resulted.

For these and other reasons, Mr. President, I support the amendment offered by the Senator from Louisiana. It is time that we address ourselves to the needs of our educational system, that we end the destructive, costly, and negative practice of forced school busing, and that instead we devote our attention and our efforts toward improving the quality of education for students of all races.

Before closing, Mr. President, I want to point out that on June 9, 1981, by a vote of 265 yeas to 122 nays, the House of Representatives adopted an amendment which in effect forbids the use of funds for any action to require directly or indirectly the transportation of students to a school other than that nearest the student's home. While this is somewhat different than the terms and provisions of the Johnston amendment, the purposes and aims of these amendments are identical. If the Senate adopts the Johnston amendment, as I hope and believe it will, there should be little or no problem in reaching an agreement in conference.

I strongly urge my colleagues to vote for the pending amendment.

I thank the Senator again for the work he is doing.

Mr. JOHNSTON. I thank the distinguished Senator from Mississippi.

Mr. STENNIS. Mr. President, I yield the floor.

Mr. JOHNSTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Louisiana.

WHITE FLIGHT: THE COLEMAN CONTROVERSY

Mr. JOHNSTON. Mr. President, when a large number of white pupils leaves a public school system, the resultant pupil mix can be so heavily tilted toward minorities that desegregation is no longer possible. This is the "white flight" phenomenon identified by Dr. James S. Coleman and described in his Urban Institute paper "Trends in School Segregation 1968–73." It had long been known that middle-class families had been moving out from the large older cities into suburbs, leaving urban school districts with increased percentages of minority students, but Coleman was the first to indicate that school desegregation contributed significantly to the declining white enrollments in public schools. Ironically, Coleman's massive 1966 study, the equal educational opportunity survey, known as the Coleman report, had provided the rationale for the use of busing as a tool to promote desegregation, and proponents of activist desegregation policies attacked him bitterly.

In August 1975, a symposium on school desegregation and white flight was convened, funded by the National Institute of Education and hosted by the Brookings Institution. Although Coleman was a participant, the papers which emerged from the conference consisted entirely of rebuttals of his position. Reynolds Farley criticized his findings, and his claim that desegregation accelerated white flight was denounced by Robert Green, of Michigan State, and Thomas Pettigrew, of Harvard, who charged that Coleman had been selective in his choice of school districts and that their own reanalysis revealed no correlation.

There were three major criticisms of Coleman's study: That his conclusions were invalid because he did not look at enough districts; that white flight from central cities is a long-term phenomenon independent of desegregation; and that desegregation does not cause it because the same level of loss can be observed in cities whether or not they have court-ordered desegregation or busing.

The most serious challenge to Coleman's findings was mounted by Christine Rossell whose own study, she held, demonstrated that school desegregation causes "little or no significant white flight, even when it is court-ordered and implemented in large cities." She said that her data contradicted almost every claim Coleman had made. But Rossell's later and more detailed analyses yielded results consistent with Coleman's. In fact, both Rossell and Farley have admitted publicly that Coleman's original findings were essentially correct; Pettigrew and Green, whose critique relied heavily on the original Farley and Rossell studies, have not been heard from. Contrary to popular and even, in some cases, scholarly opinion, Coleman's 1975 report has not been discredited, although the agencies which expedited publication of the early critiques, the National Institute for Education, Brookings, and the Harvard Educational Review, have been slow to publicize the later studies establishing his credibility.

WHITE FLIGHT: THE ARMOR STUDY

Mr. President, David J. Armor's 1978 study of court-ordered mandatory desegregation in large—over 20,000—school districts with a significant minority enrollment uses a demographic projection technique to estimate what the white enrollment would have been in the absence of desegregation. Armor found massive white flight: A substantial—double the rate projected as normal—anticipatory effect in the year before busing was to begin; a first-year effect four times as great; and a long-term effect 4 years later of twice the projected rate of loss. In the majority of districts, half the white loss over a 6- to 8-year period is due to court-ordered desegregation efforts. White flight accelerates the "tipping" process by which minorities become the majority in a school district and desegregation becomes resegregation. Here is what Armor says:

> Before the desegregation action in Boston (1972), there were 57,000 white students but by 1977, there were only 29,000. Of this total decline of 28,000, about 16,000 (or three fifths) is attributable to desegregation activities. As a direct result of court-ordered busing, Boston became a majority black school district in 1975. It is interesting to note, also, that minority enrollment stopped growing rather suddenly in 1975 . . . This shows that black flight—which has not been studied—may also be a phenomenon in court-ordered desegregation. . . .

Statistics for various school districts undergoing court-ordered desegregation involving some degree of busing show substantial declines in white enrollment. The Los Angeles Times reported that between the fall of 1979 and the fall of 1980, when the Los Angeles desegregation plan was extended to more grades than before, white enrollment in the Los Angeles school district dropped by 18,515 students or 12.8 percent. Minority enrollment grew by 1.2 percent. St. Louis offers an example of significant white enrollment losses between 1979 and 1980, when mandatory reassignment of some students began. In the fall of 1979, nonblack enrollment was 16,444. By the fall of 1980 that number had dropped to 13,244, a loss of 21 percent.

Armor cautions that the white flight phenomenon comprises more than relocation of family residence. He states:

> ". . . there are three major processes which can give rise to white flight from public schools: (1) residential relocation outside the district; (2) transfer of children from public to private schools; and (3) failure of new area residents to replace regular outmigrants who are leaving the area for reasons unrelated to desegregation . . . some white flight effects are manifested by the slowing down of white growth rather than the acceleration of white decline."

Mr. President, these distinguished studies and this statistical evidence in this quite place in the U.S. Senate stands in stark contrast to what court-ordered busing means in human terms and in educational terms out in what is called the field. The field, in my case, Mr. President, is my own State of Louisiana.

I can tell my colleagues that education in Louisiana at this point, in large areas of my State, is in absolute turmoil because of what Federal judges have seen as their duty, under the rule of the Supreme Court, to order massive cross-town busing.

The attorney for the Baton Rouge Parish School Board appeared when this matter was considered before the Judiciary Committee. He pointed out—and he represents virtually all of the parishes now being brought under court order in Louisiana and has been in this business for a long time—that the experts employed by the Justice Department, when they are brought into a case to give advice, that their rule of thumb is that every school in a parish or county must be integrated with a 15-percent error rule.

That is the plan which they will offer in each case. That is, if you have an all-white school, it must be integrated to within 15 percent, plus or minus error differential. The same thing is true with all-black schools. The same thing is true with all schools.

The problem is, Mr. President, due to our residential housing patterns across this country and in my State in particular, in order to achieve that kind of level of mixing it requires massive, long distance, cross-town busing. That is precisely what has been ordered in the Baton Rouge Parish, that is precisely what has been ordered in Rapides Parish, and that is the sword of Damocles that hangs over the heads of school districts in my State as well as school districts around the country.

What is happening is that on a massive basis the process of white flight is beginning. You can say, "Well, those who wish to go, let them go. Good riddance, if they have racism in their soul or whatever other kind of motive, unsavory motive, let them go." But the problem is, Mr. President, that with the white flight comes the demise of the quality of education. It makes it that much more difficult to get a bond issue approved financing public education. It makes it more difficult, indeed, to have an integrated experience because if, as the Armor study and the Coleman study shows, the white students in massive number leave, then there are many, many fewer numbers with which to integrate.

So, Mr. President, what I am trying to do in this amendment is to stem the tide, in effect to save public education, to save the quality of education, in my State and across the Nation. It may not be a perfect amendemnt. It is criticized by some because it goes too far and by others because it does not go far enough. What it does do is to put a rule of reason, Mr. President, on the issue of busing. To the extent that busing is allowed in this amendment, it will be allowed within the context of the neighborhood in which the student is located.

It will not be beyond the reach of parents to participate in the school with PTA's or other extracurricular activities.

I would hope that my colleagues would approve this amendment and that it could be enacted into law rapidly.

Mr. President, I see the distinguished Senator from Connecticut, and at this point I yield the floor.

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. WEICKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. JOHNSTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

● Mr. NICKLES. Mr. President, I support amendment No. 96, as modified, which prohibits the mandatory busing of students for the purpose of integration.

I believe, Mr. President, that despite the good intentions behind the court decisions and legislation of the last 27 years that have required busing for the purpose of desegregation, the overall result of such a policy has been failure.

However, I do not stand here just to represent my own thoughts on this matter. Public opinion polls on this issue have made an interesting statement on behalf of the American people in regard to integration and the use of busing to achieve that end. It seems that an ever-growing number of Americans believe that a good education means one which brings together students of all races. In other words, Americans favor integration. Yet, there is substantial opposition to busing as the means to achieve desegregation in the school system. Why? Because busing has not proven to bring enough gains toward the end goal of desegregation to offset the costs of this policy.

The price has included such things as higher transportation costs as Senator HELMS pointed out in his remarks on Tuesday. At a time when inflation and escalating oil prices are driving up such costs for the schools anyway, this burden becomes very heavy. Yet, such a financial burden might be affordable if the results of busing were positive. But they are not.

Instead of concentrating on improving the quality of education that all students receive, all those involved with education—students, parents, teachers, and administrators—are coping with the loss of the neighborhood school, community fragmentation and polarization, and racial quotas.

No wonder the public schools are in turmoil. No wonder student achievement tests are declining. We have, in effect, told them that their priority is not education, its getting the right numbers of blacks and whites.

I believe that it is time to recognize that we have made a mistake. Busing has not proven to be the answer to the common goal of integration. There have got to be other incentives and ways. It is time to assist schools in their efforts at education, not put roadblocks in their path. Therefore, I support this amendment which limits the Department of Justice's activities in regard to busing.●

Mr. JOHNSTON. I ask unanimous consent that the amendment offered as an amendment to the pending amendment be printed.

The PRESIDING OFFICER. The amendment will be printed.

Mr. JOHNSTON. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MURKOWSKI). Without objection, it is so ordered.

The question is on the amendment of the Senator from North Carolina, as modified.

Mr. WEICKER addressed the Chair.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. WEICKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RECESS UNTIL 5:25 P.M.

Mr. BAKER. Mr. President, it is clear to me that nothing further can be done at the moment. There are other matters that are in negotiation now to try to expedite the progress of the Senate on the matters before it at this time and those matters that will shortly be before the Senate.

I have just talked to the minority leader and he is agreeable to this recess.

I ask unanimous consent, Mr. President, that the Senate now stand in recess until 5:25 p.m.

There being no objection, the Senate, at 4:52 p.m. recessed until 5:25 p.m.; whereupon the Senate reassembled when called to order by the Presiding Officer (Mrs. KASSEBAUM).

Mr. BAKER. Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. PELL. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mrs. KASSEBAUM). Without objection, it is so ordered.

"MEET THE PRESS" INTERVIEW WITH CYRUS VANCE

Mr. PELL. Madam President, yesterday former Secretary of State Cyrus

Vance was interviewed on NBC's "Meet the Press" program, where he made a number of interesting observations on several important foreign policy issues.

I was particularly struck by his comments on the administration's decision to change the earlier policy, followed by the three previous administration, by expressing the Reagan administration's willingness to transfer lethal military equipment and technology to the People's Republic of China. I agree with former Secretary Vance that this decision is "needlessly provocative" in our relations with the Soviet Union. As I stated on the floor of the Senate on June 17, a decision of this importance should have been preceded by public discussion and consultations with Congress before the Chinese were informed of this change of policy.

Madam President, I ask unanimous consent to have printed in the RECORD the full text of the "Meet the Press" interview.

There being no objection, the text was ordered to be printed in the RECORD, as follows:

[From "Meet the Press"]

Guest: Cyrus R. Vance, former Secretary of State.

Moderator and executive producer: Bill Monroe, NBC News.

Panel: Bill Monroe, NBC News; Henry Bradsher, Washington Star; Jack Rosenthal, New York Times; and Marvin Kalb, NBC News.

Mr. MONROE. This is Bill Monroe inviting you to Meet the Press with Former Secretary of State Cyrus Vance.

(Announcements.)

Mr. MONROE. Our guest today on Meet the Press is Cyrus Vance, Secretary of State under President Carter until he quit in opposition to the unsuccessful Iran rescue mission. Mr. Vance was an architect of the SALT II arms limitation treaty, now shelved by the Reagan Administration. Currently practicing law in New York, he has just returned from a trip to the Soviet Union.

Mr. Vance, President Reagan has been in office now five months and he has been emphasizing, as he said he would, improving American military strength and taking a tough line with the Soviet Union. What is your overall assessment of the Reagan foreign policy so far?

Mr. VANCE. I regret I must say that it is more of a posture in many important areas than it is a policy. In my judgment that is dangerous. It is necessary to have a clearly thought out policy in key areas.

For example, I do not see any policy insofar as relationships with the Soviet Union is concerned. I do not see a clear policy with respect to the Middle East. The Reagan Administration has indicated that the thrust of their policy would be to try and put together an alliance addressed against the Soviet Union without addressing the question of the Palestinian issue. In my judgment, it is impossible to deal with the real problems of the Middle East unless you deal with the Palestinian issue. It will not do to try and wish it away or to put it on the back burner.

Again, in Southern Africa, I fail to see a policy on the part of the Reagan Administration there. Again, I think it is a posture rather than a policy.

Mr. MONROE. I think we may want to come back to some of the questions you have raised, but let me ask you right now about a more specific subject. Do you believe that Israel was in violation of U.S. law when it attacked the Iraqi nuclear reactor using American planes?

Mr. VANCE. I agree with the action taken by the Reagan Administration in condemning the attack on the reactor outside of Baghdad. I also agree with the statement made by Miss Kirkpatrick that the condemnation was warranted because Israel had not exhausted the diplomatic means available to it to ease, do away with, the concerns and fears which understandably Israel has.

I have been one who for many years has been deeply concerned about the security. I worked during my time in the Administration and continue to work to see that that security and wellbeing are protected.

However, I must say that I do not believe that the action was taken, in the longrun, will advance the security of Israel. In the shortrun, it may have an effect. But in the longrun, I think it will not, because one must address the underlying problem, the overriding problem, of the Palestinian issue in the Arab-Israeli conflict. And I think, insofar as addressing that problem is concerned, the action which was taken makes it more difficult rather than more easy.

Mr. MONROE. Mr. Vance, you are a former Secretary of State, also a lawyer. Did Israel violate U.S. law, in your opinion?

Mr. VANCE. That is a determination which the Administration is going to have to make in conjunction with the Congress. And I believe that we should wait until we see what the Administration has to say on this.

Mr. MONROE. Thank you, Mr. Vance. Our reporters on Meet the Presss today are Henry Bradsher of the Washington Star, Jack Rosenthal of the New York Times, and Marvin Kalb of NBC News, regular member of the Meet the Press panel. We'll be back with our questions in a minute.

(Announcements.)

Mr. MONROE. We'll continue the questions for Cyrus Vance with Henry Bradsher.

Mr. BRADSHER. You just referred to the efforts of the Administration when you were Secretary of State to resolve the Arab-Israeli conflict. That led to Camp David which then produced a treaty between Israel and Egypt and further talks which seemed to have bogged down by the time you left office a year ago. Why did that effort bog down and what do you think should be done now to resume the movement on trying to resolve the Arab-Israeli question?

Mr. VANCE. The effort bogged down because I think that all of us would agree that the most difficult issue is the resolution of the Palestinian question. The first step in building a structure toward a Middle East peace was taken in the agreement which was reached between Israel and Egypt on the Sinai and I think it was a very important step. But we will never have a lasting peace until we solve the second half of the problem, namely, the Palestinian question. It is deeply entwined in passions, roots, that run very deep among all the parties to the negotiations.

Having run into difficulties, as one would expect, those had to be put aside pending the Israeli elections. The Israeli elections will soon be held and after that I think it is imperative that the negotiations be resumed and resumed promptly.

Mr. BRADSHER. But are you saying that the talks which came out of Camp David on the Palestinian issue still have some promise, that they still can be pushed and might result in a settlement?

Mr. VANCE. I think they still have some promise and we will have to see what the position of the new Israeli government is as to how they will wish to proceed. As you know, under the current Israeli government, the emphasis was on the autonomy talks. It may well be that if the Labor government comes to power, the emphasis will be shifted from that to discussion of the territorial compromise, in other words, a territorial adjustment of the differences between the parties. So I think one cannot say at this point, until we see who is elected, what the direction of those talks will be.

Mr. MONROE. Mr. Rosenthal?

Mr. ROSENTHAL. Mr. Vance, the Carter Administration put substantial emphasis on human rights and even so, places like Korea and the Philippines turned out to be exceptions. Now the Reagan Administration draws its line between authoritarian governments and totalitarian governments. Is that a tenable distinction and what line would you now draw for establishing human rights policy?

Mr. VANCE. I really do not think that that is a tenable distinction. I find it hard to say that this semantic distinction is going to make it possible to deal more effectively with the human rights problems. I think what we must keep very much in the forefront of our mind is that the issue of human rights is an issue that is international in its nature. This has been recognized by most of the nations of the world, by their signing of various agreements which indicate that they recognize that that is the fact.

Therefore, I think that what we should be doing now is not trying to downgrade the issue of human rights but to continue to have it as a central part of our foreign policy. It is necessary that we keep this issue very much at the forefront of our foreign policy and it is important as to how we are perceived by other nations in this regard.

We ought to stand in the world for human rights and not merely for human rights when human rights is convenient. I would submit, Mr. Rosenthal, that the human rights policy carried out during the Carter Administration, although it had difficulties and problems, was a sound policy and a policy which did have positive effects.

I would point only to the recent statements made by Mr. Timmerman from Argentina who said very clearly that what the United States did in the field of human rights saved thousands of Argentinians from torture and from death.

Mr. MONROE. Mr. Kalb?

Mr. KALB. Mr. Vance, when you quit in April of 1980, were you aware at that time that the U.S. was trying to set up an intelligence sharing operation with the Chinese?

Mr. VANCE. Mr. Kalb, I have made it a practice, always, never to talk about things which relate to U.S. intelligence and I am going to adhere to that now.

Mr. KALB. Okay, then I won't pursue that. Could you—you have just returned recently from Moscow?

Mr. VANCE. Yes.

Mr. KALB. Could you tell us your own view on whether the Soviet Union, according to one line of thought in Washington, anyway, seems to be giving up on the Reagan Administration as a reliable partner in a sense of developing a spirit of cooperation between the super powers?

Mr. VANCE. I think it is a real question in Moscow, as to whether or not there is any possibility of resuming serious negotiations between the Soviet Union and the United States.

And let me say that I do not think that that has been helped at all, indeed, I think it has been hurt by the action which was taken the other day, when it was announced that the United States intends to sell lethal weapons to The Peoples Republic of China.

Mr. KALB. Do you think, sir, that there may be a relationship between that decision and a Soviet increased willingness to intervene in Poland?

Mr. VANCE. Let me first say a word more, if I might, about the decision, and then I'll answer your question.

Mr. KALB. Please.

Mr. VANCE. I think that the decision was needlessly provocative. I think it smacks of

bear-baiting rather than dealing seriously with the problems. The purpose of diplomacy is to try and influence action on the part of other parties. I think that the action that was taken in saying that we are going to sell lethal weapons will not have any positive influence with respect to the Soviet Union. Indeed, I think it can have only a negative influence.

What's more, I think that we may end up, having taken this decision, alienating both parties, because it remains to be seen as to how much will actually be sold to the Chinese and we may end up with the worst of both worlds, namely, both parties feeling that a decision has been taken which they are greatly opposed to.

Now, coming back to your question, will it have any effect on Poland? Let me say that I think that that decision reduces any leverage which we may have with the Soviet Union, and therefore I think in that sense it probably does have some effect.

Mr. KALB. Do you think we had any leverage, at this point:

Mr. VANCE. Very little, but some.

Mr. MONROE. Mr. Vance, in the matter of the Polish situation, what would you do about it that the Administration is not now doing? They have issued one warning after another that if the Soviets move in Poland there will be grave troubles over a period of years. What else do you think the Administration could do?

Mr. VANCE. I think the Administration has made it very clear what our policy is with respect to Poland. I do not think there is any misunderstanding about our position insofar as the Soviets perceive it.

Mr. MONROE. Well, you say the Administration has made its policy very clear. A moment ago, you said the Administration had more of a posture than a policy. What would you say to the argument that the kind of posture or policy this Administration has—President Reagan says it is a clear policy and he does not need a speech to make it a policy—what would you say to the argument that their posture is exactly the kind of posture people hoped for, certainly conservatives hoped for, from the Carter Administration, the feeling that the Carter Administration was too weak, did not build up military strength, did not stand up to the Soviet Union?

Mr. VANCE. I believe that the decision as to what happens in Poland will be made and should be made by the Polish people among the three principal groups, Solidarity, Party, and the Church. And I think that for us, at this point, to do anything more, is probably counterproductive. I do think the Soviets understand what we have said we are prepared to do, what the seriousness of this will be, not only insofar as the United States is concerned, but I think they also understand the seriousness of what an intervention would mean to the entire world.

So that at this point, I do not suggest anything else that the United States ought to be doing, at this point.

Mr. MONROE. But to some extent you are reaffirming Administration policy? You are saying they have a clear policy in Poland?

Mr. VANCE. I think it is clear, yes.

Mr. MONROE. Mr. Bradsher?

Mr. BRADSHER. Is there really a policy on arms control, though? We are now four months into the new Administration. When your Administration, when the Carter Administration was two months old, you made new arms control proposals. They didn't get very far, but within four months you had the talks going on the track that led to the 1979 Strategic Arms Limitation Treaty. Now the Administration hasn't even gotten around to formulating a position and is talking about the end of the year. Why is this so difficult? What are the problems now and do you feel that they are dragging their heels as the Soviets accuse them of doing?

Mr. VANCE. I do not believe that they have a policy yet with respect to arms control, and by "they," I mean the current Administration in the United States. And I believe this is bad and unfortunate. I think it is important that we do promptly start discussions with the Soviet Union. The clock is ticking. SALT I has expired, by its terms, even though it is being de facto observed. SALT II has not been ratified. And the pace of development of weapons is proceeding at a rapid pace.

Mr. BRADSHER. Do the Soviets——

Mr. VANCE. If we miss this opportunity to start serious discussions again, we may well find that we have missed it and that time has gone by.

Mr. BRADSHER. Do you feel that the Soviets are sincerely interested in controlling and even reducing armaments or do they want to just somehow stop things where they are with what they now feel is a fairly comfortable position for themselves?

Mr. VANCE. It is awfully hard to say what is in their minds. My own view is that they are seeking rough parity, rough equality, as we have been, and I think negotiations resumed on that basis could make some progress.

Mr. MONROE. Mr. Rosenthal?

Mr. ROSENTHAL. Mr. Vance, in the New York Times last February, you wrote an article advocating reform of the political campaign system, and in the article you wrote, "The long period of highly charged electioneering results in the shelving of some policy decisions until after the campaign. Other decisions may be influenced by the politics of reelection." Doesn't that mean that Jimmy Carter put his reelection ahead of his principles and his policies?

Mr. VANCE. I think that whoever is in office under the current system which we have, with the extended primary system which runs over a period of many months, leads quite naturally to a situation in which difficult decisions are often put aside and not acted on and other decisions are made and are affected by the political winds of the moment. So I think that that happens with whoever happens to be in office. And that's why I believe that one of the imperative problems that we face is the problem of reforming the system so as to shorten it and make it possible to lessen the chance of those kinds of things happening.

Mr. MONROE. Mr. Kalb?

Mr. KALB. Mr. Vance, I'd like to ask you about our relations with Israel for a moment. In light of recent developments, do you feel that the United States should now be seeking, in conjunction with the Congress, the Administration and the Congress, some new definition of that relationship?

Mr. VANCE. I think it is important that we have a clear understanding with Israel as to our objectives and their objectives. I think they should also clearly understand that our commitment to their security is firm and will remain firm. I think they should also understand that it is our belief that it is necessary to have flexibility on both sides if there is to be progress in resolving the remaining issues that have to be resolved.

Mr. KALB. Do you sense that there has been, in recent months and years, an erosion of U.S. support of Israel?

Mr. VANCE. To a degree, there has been some erosion, but I do not think that is permanent. I think it happens from time to time that there are ups and downs in the relationships between our two countries. But I don't think anybody should be misled that there is any lessening in the fundamental friendship and concern in the United States for the wellbeing and security of Israel.

Mr. KALB. Well, one of the Senators on the Foreign Relations Committee said this past week that we ought to be drawing a distinction between our commitment to Israel and our feelings about the leadership of Israel, as though, in a democracy, that were a possible distinction that could be drawn. I was wondering what your own view is on that? Is that a possible distinction? Should one do that?

Mr. VANCE. No. I think it is very hard to do that. I think a country is governed by its leadership and you take it as it is governed by its leadership.

Mr. MONROE. Mr. Vance, the Reagan Administration obviously feels that in certain areas of turmoil, such as in Central America, they can do better than the Carter Administration by coming in more forcefully, with military aid, for example, to forces looked on as friendly to us, such as in Guatemala, the new allocation of trucks, and El Salvador. Do you think they might get better results than you did?

Mr. VANCE. I don't think so. I think that we have to take a very clear and hard look at what the nature of the problem is and what its causes are—and if the causes of the problems are economic, social, and political, and those are the causes that have to be dealt with if you are going to get a solution. If we try to militarize the solution rather than seeking a political solution, we may make it more difficult for the people of El Salvador to achieve a solution. That view is shared by the whole spectrum of Latin American countries, from left to right, and they are the ones who are the immediate neighbors. And I think this is something that we ought to take into account. When we see the whole political spectrum saying to us, from Latin America, this is a political problem, it must be solved as a political problem, we ought to listen.

Mr. MONROE. Thank you, Mr. Vance, for being with us today on Meet the Press. I'll be back in a minute with a look at letters.

(Announcements.)

Mr. MONROE. Next Sunday on Meet the Press, another headline figure in the news will be our guest.

Now, this is Bill Monroe, saying goodbye for Cyrus Vance and Meet the Press.

HIGH INTEREST RATES

Mr. FORD. Madam President, as part of our continuing discussion on high interest rates and the calamitous effect they are having in nearly every segment of our society, I focus on the agricultural sector.

There is no other group whose life and well-being revolves so much around borrowed time and money. Yet, the contribution farmers make is vital to the well-being of the Nation as a whole and that is why something must be done to ease the burden placed on them as the result of continued high costs of credit.

To put their predicament in perspective, let me just tell you about a current situation that exists in my State.

Last summer, a severe drought devastated crops and destroyed livestock over large portions of my State and throughout the South and Midwest. Total agricultural losses exceeded $1 billion in some States and hundreds of counties were declared disaster areas.

In Kentucky alone, agricultural income was reduced by $500 million. Corn and soybean yields dropped 29 percent below 1979 levels.

This year, farmers in a number of areas are experiencing just the opposite problem—too much rain. Several areas

of the country have been ravaged by flooding. Farmers have been unable to work their fields because of excess water, and the deadline for planting many crops in hope of harvest is past.

Madam President, I draw attention to these problems of nature because they illustrate just how precarious a farmer's life can be. No matter how efficient, no matter how diligent, and no matter how innovative a farmer may be, all his work may be in vain if nature does not cooperate. For this reason, the farmer faces a most uncertain set of circumstances upon which to make business decisions, and the last thing he needs is the headaches caused by the fluctuation of interest rates.

Until lately, the cost of credit to farmers has been fairly stable. A farmer could plan a yearly budget with a pretty good idea of his expenses, yet even during these times the profit margin for the farmer, especially the small family operation, was razor-thin.

The increased cost of credit in recent months has cut dramatically into that profit margin, if not eliminating that margin entirely.

During stable times, a farmer can meet increased production costs by corresponding increases in productivity.

However, there is no simple way for dealing with the soaring costs of credit. More often than not, the farmer either goes deeper in debt to raise the money necessary to plant his crop, sells his land, or leaves the farm entirely.

As these high interest rates continue, the options available to most farmers—especially smaller operations—dwindle down to the last two I mentioned, and when this happens our country is the poorer for it.

I only hope, Madam President, that we can find a way—and soon—to lift this burden from the back of our farmers before it is too late.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BAKER. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. GRASSLEY). Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. BAKER. Mr. President, I invite the minority leader's attention to the following statement.

We have cleared on our Executive Calendar the nomination of Daniel J. Terra, of Illinois, to be Ambassador at Large for Cultural Affairs; and Robert I. Brown, of Virginia, to be Inspector General of the Department of State, as well as John J. Knapp, of New York, to be General Counsel of the Department of Housing and Urban Development. I wonder if the minority would be in a position to clear those nominations for consideration at this time?

Mr. ROBERT C. BYRD. Mr. President, the minority has cleared the nominations to which the distinguished majority leader has alluded and, in addition thereto, the nomination of Mr. Lawrence F. Davenport, of California, to be an Associate Director of the ACTION agency and is ready to proceed.

Mr. BAKER. I thank the minority leader.

Mr. President, I ask unanimous consent that the Senate now go into executive session for the purpose of considering the nominations of Daniel J. Terra, Robert I. Brown, and John J. Knapp.

There being no objection, the Senate proceeded to the consideration of executive business.

DEPARTMENT OF STATE

The PRESIDING OFFICER. The clerk will state the nominations.

The assistant legislative clerk read the nomination of Daniel J. Terra, of Illinois, to be Ambassador at Large for Cultural Affairs.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the nominee was confirmed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The assistant legislative clerk read the nomination of Robert I. Brown, of Virginia, to be Inspector General of the Department of State and the Foreign Service.

The PRESIDING OFFICER. Without objection, the nomination is considered and confirmed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the nomination was considered and confirmed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

The assistant legislative clerk read the nomination of John J. Knapp, of New York, to be General Counsel of the Department of Housing and Urban Development.

Mr. GARN. Mr. President, as chairman of the Senate Banking Committee, I am pleased that Mr. John Knapp's nomination as General Counsel of HUD has been brought to the floor today. In the completed questionnaire submitted to our committee, Mr. Knapp disclosed that he was the subject of an SEC investigation while serving as counsel for the National Kinney Corp. He voluntarily supplied the Banking Committee with copies of the complaint and the consent decree which were filed simultaneously by the SEC.

Mr. Knapp was not named as a defendant in the complaint, but the SEC alleged that he made numerous untrue or misleading statements to an official of the American Stock Exchange who was investigating unusual trading activity and price rise in National Kinney stock.

Although the SEC did not proceed with any enforcement action and accepted the filing of a consent decree in which National Kinney agreed to make full and fair disclosure with exchanges in the future, the Banking Committee chose to examine the case in great detail.

Copies of all pertinent pleadings, dispositions, affidavits and documents were obtained from the SEC's investigation file and reviewed with the attorneys from the SEC who had handled the case. Summaries of the case from the SEC and the American Stock Exchange were also obtained.

Two separate hearings were held by the Banking Committee on the nomination—one with Mr. Knapp alone and the other with representatives of AMEX. During these hearings, John Knapp admitted to the committee that he was unaware of his standard of disclosure as outlined in Geon against SEC. He did not understand the distinction between release of information to the public versus disclosure to the listing representative.

Knapp further admitted to AMEX and to the SEC that he had knowledge of business discussions prior to his conversations with AMEX representative. He did not disclose them because he estimated that they would not produce any agreement—indeed, in the final analysis, they did not.

The SEC's position was that John Knapp had a duty to respond fully and fairly to inquiries from its listing exchange. His duty does not depend on the listing representative asking the right question. He must volunteer all information which may have a material impact on the company which a reasonable investor might consider important.

A review of the AMEX contact sheets which were prepared contemporaneously with its employees' conversations reports that Mr. Knapp "stated there was no unannounced corporate developments to account for the activity." Furthermore, the language on the employee's check list read:

> I asked whether or not there were any material corporate developments which have not been announced which might have caused the activity.

So there is some independent evidence to support Mr. Knapp's version of the conversations.

After reviewing materials sent to AMEX by the committee, AMEX responded in a letter that:

> There is no significant difference in the . . . versions of the conversations and events which took place regarding the Kinney stock; rather any inconsistencies appear to rise out of the different interpretations (given) to such conversations and the different views . . . held concerning the responsibilities which flow from such different interpretations.

This was confirmed by testimony at our second hearing.

There is no evidence of any inside trading, profit or potential profit by Knapp or any other official of Kinney. Mr. Knapp should have been more forthcoming with AMEX during his conversa-

tions with Digges, and he has admitted such to this committee.

In difficult circumstances, Mr. Knapp was unfamiliar with the full extent of his duty and was mistaken in not openly discussing the possible causes of the unusual trading with AMEX.

His judgment of the speculativeness of the discussions to enter the casino business, however, proved correct, since no agreement was ever reached.

Under the circumstances, the SEC was satisfied with a consent decree that Kinney would make fully fair and accurate statements in communications with the exchange. They did not seek to prove that Mr. Knapp intentionally made untrue and misleading statements of material facts concerning corporate developments. After an extensive review of the case and two separate hearings, a poll of our committee was taken and 14 out of 15 Members voted in favor of confirming Mr. Knapp. After careful consideration, I urge the Senate to confirm Mr. Knapp as General Counsel of HUD.

Mr. PROXMIRE. Mr. President, I have indicated to the leadership my opposition to John Knapp. I certainly will not ask for a rollcall and I am sure he will be confirmed, but I think it is very important that we make a record on this nominee.

This nominee appeared before our committee on Banking, Housing, and Urban Affairs.

My difficulty stems from Mr. Knapp's failure to be forthcoming, as required by law, with American Stock Exchange officials in a matter involving unusual trading in the stock of National Kinney Corp. at a time when Knapp was general counsel of Kinney.

Let me set forth the salient facts briefly. Every company listed on the AMEX signs a listing agreement that is designed to insure a fair and orderly market. The AMEX Co. guide, which is also agreed to by each listed company, states that:

In order to insure such a marketplace, every listed company . . . (must) make available to the public information necessary to informed investing and to take reasonable steps to insure that all who invest in its securities enjoy equal access to such information.

The AMEX agreement and the securities law provide for fuller and earlier disclosure to the AMEX than to the public. This is done in an attempt to balance a corporation's need for privacy in negotiations with the exchange's need for full information in order to regulate trading on its market.

Thus, a company need not disclose information to the public unless that information would be material to a person trading stocks.

On the other hand, a company basically must tell the exchange whatever it knows when asked by the exchange. This requirement is embodied in section 14 of the AMEX listing agreement, which reads as follows:

The corporation will furnish to the Exchange on demand such information concerning the Corporation as the Exchange may reasonably require.

This dichotomy in disclosing information has been ratified in case law with respect to the antifraud provisions of the Securities Exchange Act of 1934. In the leading case of *S.E.C.* v. *Geon Industries, Inc.*, 351 F. 2d 39, 50 (2d Cir., 1976), the court articulated the greater obligation to provide information to an exchange as follows:

If the issue here were whether Bloom or Geon violated Rule 10b–5 (issued pursuant to the Securities Exchange Act of 1934) by failing to issue a public statement on February 22, we would agree they did not; there was too great a danger that such a statement would induce selling that might prove to be unwarranted. . . . Gromet (the exchange representative) was not in the position of a stockholder or a registered representative; he was charged with the responsibility of maintaining orderly trading on the exchange on which Geon had listed its shares.

Thus, the court ruled that Bloom and Geon violated rule 10b–5 by not disclosing such information to the exchange official.

In the case at hand, in the fall of 1979, officials of Kinney were discussing the possibility of getting into the casino gambling business.

Although Mr. Knapp was not involved in the negotiations, he appears to have been generally kept informed as to their progress. All of a sudden, on September 17, there was dramatic unexplained movement in the stock. After an average daily volume of trading on NKC of about 7,000 shares a day for the prior 50 days, the volume shot up to 85,311.

On September 18, after the volume soared to 107,500 and the price moved up 50 percent over the price of 2 days before, Mrs. Juanita Diggs, of the AMEX called Mr. Knapp to see if he could explain the movement.

Mr. Knapp, who had been the principal spokesman for Kinney in responding to such inquiries since 1971 and was their general counsel, told her that he knew of no corporate developments that could account for the sudden change in trading and price. He told her this even though he was aware that Kinney had been investigating getting into the gambling business for several months.

On September 24—when the volume soared to 134,000—mind you, this was stock that normally traded at 7,000 shares a day—they had 134,000 shares traded after several days of more moderate trading, its price reached $3⅝, up 75 percent over September 14—Mrs. Diggs again called Mr. Knapp and he again repeated that he had no knowledge of events that could account for the changes.

Finally, on September 28—after volume reached 129,600 and the price reached $5, an increase of 150 percent over September 14—Mrs. Diggs called Mr. Knapp once again and, this time, he finally requested a halt in trading.

Thereafter, the SEC initiated an investigation in this matter to determine if Mr. Knapp had violated section 10b–5 of the Securities Exchange Act by failing to disclose to the American Stock Exchange the information he had at the time of Kinney's entry into the casino gambling business.

In his deposition to the SEC, Mr. Knapp testified that he felt that the negotiations were too preliminary to reveal, particularly in light of the fact that Mrs. Diggs was unaware of any rumors on the AMEX floor. But the company guide clearly states that a company must make inquiries to determine whether rumors or other conditions exist requiring corrective action, and Mr. Knapp's inquiry of Mrs. Diggs hardly fulfills this standard. As Lee Cutrone, assistant vice president of the AMEX testified on June 11, 1981, before the Committee on Banking, Housing, and Urban Affairs:

We recognize a company's right to negotiate in private, and we're as concerned about making preliminary announcements as anybody else. The point is when the market seems to be reacting, the question is how private are those negotiations and do we need some kind of announcement. Or in absence of an announcement, should trading be going on.

Ultimately, the SEC and Kinney settled the matter with a consent order. In the SEC complaint, which the company neither admitted nor denied in the consent order, the SEC charged that—

Mr. Knapp made numerous untrue statements of material facts and omitted to state material facts, necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading concerning, among other things, corporate developments of Kinney . . .

Obviously, as Mr. Knapp admitted at the June 11 hearing, the SEC does not issue consent orders unless it feels there is a need for one and in this case the SEC did not feel that his answers to Mrs. Diggs met at the necessary legal standards.

In his testimony before the committee, Mr. Knapp contended that he was not aware of the Geon case and that he did not tell Mrs. Diggs about the negotiations during their first two conversations because the negotiations were in a preliminary state that he felt did not rise to the level of materiality necessary to make public disclosure. In fact, Mr. Knapp's assessment of the negotiations proved correct as there was no final agreement. But this is not the point. The point is that Mr. Knapp had a different obligation to disclose information to the Exchange than he had to disclose to the public—one based upon the Amex's responsibility to run a fair and orderly market—and he failed to meet that obligation. His explanation as to why he called for a halt in the trading during the third conversion—that the price was too high and people could get hurt—applied almost equally at the time of the second conversion. People probably did get hurt because of Mr. Knapp's failure to disclose this information earlier.

The SEC officials who investigated the case believed—as indicated by the complaint—that Mr. Knapp consciously made numerous untrue statements of material facts to the AMEX representative.

I repeat: This man, who has been nominated to be general counsel of the Housing and Urban Development Agency, one of the largest agencies in our Government, with a multibillion budget and thousands of employees, was found by the SEC to have consciously made numerous untrue statements of material facts to the AMEX representative.

Mr. Knapp need not have feared that the AMEX might reveal information about the negotiations publicly which would undermine them. Amex officials testified at our hearings that they could have done other things to protect the investors than disclose the information about the gambling negotiations. These other actions could have protected both the integrity of the market and the privacy of the negotiations.

In short, I believe that Mr. Knapp protected his company at the expense of his statutory obligation to the public. This is what concerns me. How will he respond as a public official, particularly as one whose obligations go well beyond his "clients," the Reagan administration, to Congress and the public at large?

On the basis of the record, I have my doubts, Mr. President, I hope I am wrong about Mr. Knapp. He has the intelligence to do a good job as general counsel of HUD. If he takes his experience to heart and responds forthrightly and openly to inquiries from Congress and the public, he will make a valuable contribution to his own growth and to HUD.

I believe this matter is so serious that it should be called to the attention of the full Senate aloud, which I have done today. I hope, as I have said, Mr. Knapp will take this to heart, because this kind of coverup is precisely what got this country into difficulties a few years ago.

Mr. BAKER. Mr. President, I know of no further debate on this nomination.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of John J. Knapp, of New York, to be General Counsel of the Department of Housing and Urban Development?

The nomination was confirmed.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to these nominations.

The PRESIDING OFFICER. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate return to legislative session.

There being no objection, the Senate resumed the consideration of legislative business.

ORDER FOR ROUTINE MORNING BUSINESS

Mr. BAKER. Mr. President, I announce, for the benefit of Senators, that it now appears that we are in the final moments of preparation for proceeding to the consideration of the budget reconciliation bill. Certain items are still in preparation—or, rather, certain revisions are being undertaken to conform the request I will make shortly, with the understanding of all parties.

While we are waiting for that, I ask unanimous consent that there now be a brief period for the transaction of routine morning business, not to exceed 10 minutes, in which Senators may speak.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECESS UNTIL 9 A.M. TOMORROW

Mr. BAKER. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m. tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

REVISION OF ORDERS FOR THE RECOGNITION OF CERTAIN SENATORS TOMORROW

Mr. BAKER. Mr. President, are there special orders for the recognition of Senators tomorrow?

The PRESIDING OFFICER. There are.

Mr. BAKER. Will the Chair apprise me of the names and the times allocated to the Senators?

The PRESIDING OFFICER. Fifteen minutes each to Senators BOREN, BENTSEN, ROBERT C. BYRD, CRANSTON, CHILES, SASSER, MELCHER, PRYOR, BAKER, and STEVENS.

Mr. HOLLINGS. Mr. President, will the distinguished majority leader add 5 minutes for me?

Mr. BAKER. I am about to ask unanimous consent, I say to the Senator from South Carolina, to reduce the time ordered for Senators under the special orders. I will be glad to provide 5 minutes for the Senator, and I will assure him that I will yield it to him out of my time, if I may do that.

Mr. HOLLINGS. Surely.

Mr. BAKER. First, Mr. President, I ask unanimous consent that the time allocated to the Senator from Alaska (Mr. STEVENS) and the Senator from Tennessee (Mr. BAKER) be reduced from 15 minutes to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. I ask unanimous consent that the time allocated to the eight Senators who precede us on the list—I have discussed this with the minority leader—be reduced pro rata, so that the time equals 60 minutes. I believe that will be 7½ minutes each.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object—and I shall not object—this request, I am told by staff—at my request to staff—has been cleared with Senator BOREN and the Senators who are in league with him, so that the reduction by half—namely, to 7½ minutes for each Senator—is agreeable.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, shortly, I will request that the Senate grant an order to proceed to the consideration of the budget reconciliation bill at 10:30 a.m. tomorrow. However, until the final details and amendments are completed and a unanimous-consent request is agreed to, I will withhold that request.

For the moment, once again, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER REDUCING THE TIME OF THE LEADERSHIP UNDER THE STANDING ORDER

Mr. BAKER. Mr. President, I have conferred with the distinguished minority leader on this. I ask unanimous consent that on tomorrow the time allocated to the two leaders under the standing order be reduced to 1 minute each.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER ASSIGNING THE CONTROL OF TIME UNDER SPECIAL ORDERS

Mr. ROBERT C. BYRD. Mr. President, while the distinguished majority leader is on the subject of special orders for in the morning, is he agreeable to getting an order to the effect that the 1 hour which is to be divided among eight Democratic Senators be under the control of Mr. BOREN?

Mr. BAKER. Yes.

Mr. President, I am pleased to do that.

I ask unanimous consent that the hour allocated to eight Senators under special orders tomorrow be aggregated and assigned to the control of the distinguished Senator from Oklahoma (Mr. BOREN), and I ask unanimous consent as well that the 20 minutes allocated to the two Senators on this side be aggregated and assigned to the control of the Senator from Alaska (Mr. STEVENS).

The PRESIDING OFFICER. Without objection, it is so ordered.

INTERNATIONAL RECORD CARRIER COMPETITION ACT OF 1981

Mr. BAKER. Mr. President, I am told that there is clearance on both sides of the aisle to proceed now to the consid-

eration of Calendar Order No. 37, S. 271, the Western Union bill. I inquire of the minority leader if he is prepared to proceed to that at this time.

Mr. ROBERT C. BYRD. Mr. President, I am so prepared.

Mr. BAKER. I thank the minority leader.

Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar Order No. 37, S. 271.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (S. 271) to repeal section 222 of the Communications Act of 1934.

There being no objection, the Senate proceeded to consider the bill.

UP AMENDMENT NO. 170

(Purpose: To clarify certain provisions relating to international record carriers)

Mr. BAKER. Mr. President, I send to the desk an amendment by the distinguished Senator from South Carolina (Mr. THURMOND) and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER), on behalf of Mr. THURMOND, proposes an unprinted amendment numbered 170.

Mr. BAKER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 2, strike lines 1 through 7 and substitute the following:

"SEC. 3. In addition to its responsibilities pursuant to the Communications Act of 1934, the Federal Communications Commission shall require domestic telegraph carriers to provide communications facilities to any international telegraph carrier which makes a reasonable request for such services or facilities upon terms and conditions which are just, reasonable, equitable, nondiscriminatory, and in the public interest.

"SEC. 4. Nothing in the Communications Act of 1934 shall be construed to prohibit the entry of international record carriers into the domestic market, and the Federal Communications Commission is directed to act expeditiously upon all applications filed by international record carriers to provide domestic telex service pursuant to the Communications Act of 1934.

"SEC. 5. The Federal Communications Commission shall exercise its authority under the Communications Act of 1934 to continue oversight over the establishment of just, reasonable, equitable, and nondiscriminatory distribution formulas for unrouted outbound telegraph or record traffic and the division of revenues. This provision shall cease to have any force or effect at the end of the three year period beginning on the date of enactment of this Act.

"SEC. 6. Notwithstanding any other provision of law, the Federal Communications Commission shall not be authorized to act upon any application to provide international telegraph or record service which is filed by a domestic telegraph carrier pursuant to the Communications Act of 1934 until 120 days after the date of enactment of this Act."

Mr. THURMOND. Mr. President, I am pleased to lend my support to S. 271, the International Record Carrier Competition Act of 1981. I believe that with the amendments I offer today, it is a much improved bill, and one to which I feel I can lend my support.

As you know, Mr. President, the Committee on the Judiciary has initiated a series of hearings on the issue of monopolization and competition in the telecommunications industry. In the first of those hearings, we addressed the competitive impact of Western Union's entry into international markets. We took extensive testimony and developed what we consider to be a thorough record and examination of the issues. As a result of this hearing, I have concluded that S. 271 is a commendable move in the direction of deregulation, a goal which I wholeheartedly support. The amendments that are offered today are designed to support that goal by helping to foster competition in international and domestic record services.

The amendments provide a new section 3 to S. 271. This provision recognizes the Commission's obligations under the Communications Act to insure Western Union's interconnection with the international record carriers. This new section adds further emphasis to Congress' insistence that the Commission act to insure that the international carriers are provided adequate interconnection on fair, reasonable, equitable, and nondiscriminatory terms. This section is not meant to go beyond the existing provisions of the Communications Act, but is intended to reinforce the standards set in it.

The new section 4 reflects a concern raised during our hearings that the FCC has failed to act upon pending domestic telex applications, filed by international record carriers. This troubles me, Mr. President. Entry by these carriers into the domestic market would serve to promote competition both domestically and internationally. I do not believe that the FCC should authorize entry by Western Union into international markets without permitting entry by the international carriers into the domestic record market.

The new section 5 simply reiterates Congress' concern that the FCC continue to oversee the formula by which unrouted international messages are distributed, and revenues divided. This is the formula by which Western Union is required to distribute unrouted traffic to each international record carrier in proportion to the routed traffic that each international record carrier generates. FCC oversight must always result in a formula that is just, reasonable, equitable, and nondiscriminatory. This provision shall cease to have any force or effect at the end of the 3-year period beginning on the date of enactment of this act.

Finally, a new section 6 reflects the concern that the present position of Western Union in the domestic market not provide it any unfair advantages when section 222 is repealed. This section seeks to assure that the international carriers will have an opportunity to get a "head start" before Western Union is released by the FCC into the international arena. Thus, the amendments provide that the FCC must wait 120 days before acting upon any application filed by Western Union to enter the international record market.

In order to give full force to the spirit of the 120 day head start, the FCC is administered to actively utilize this period to move quickly on the applications filed by the international carriers to provide domestic telex service. It seems likely that 120 days is not an adequate time period for the international carriers to overcome Western Union's domestic competitive advantage, but it will be totally ineffectual if through regulatory delay, there is no effective period at all.

There is one final point that I would like to clarify. There has been some concern expressed by international carriers that other legislation under consideration by the Commerce Committee affecting the domestic common carrier industry would repeal provisions of the Communications Act that affect international telecommunications. I have been assured by the Commerce Committee that neither S. 898, the Telecommunications Competition and Deregulation Act of 1981, nor any other legislation which they are considering at this time, will affect international telecommunications issues in any way that will interfere with the substantive safeguards provided in S. 271, as amended.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Tennessee on behalf of the Senator from South Carolina.

The amendment (UP No. 170) was agreed to.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and the third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

So the bill (S. 271), as amended, was passed, as follows:

S. 271

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "International Record Carrier Competition Act of 1981".

SEC. 2. Section 222 of the Communications Act of 1934 is repealed.

SEC. 3. In addition to its responsibilities pursuant to the Communications Act of 1934, the Federal Communications Commission shall require domestic telegraph carriers to provide communications facilities to any international telegraph carrier which makes a reasonable request for such services or facilities upon terms and conditions which are just, reasonable, equitable, nondiscriminatory, and in the public interest.

SEC. 4. Nothing in the Communications Act of 1934 shall be construed to prohibit the entry of international record carriers into the domestic market, and the Federal Communications Commission is directed to act expeditiously upon all applications filed by inter-

national record carriers to provide domestic telex service pursuant to the Communications Act of 1934.

SEC. 5. The Federal Communications Commission shall exercise its authority under the Communications Act of 1934 to continue oversight over the establishment of just, reasonable, equitable, and nondiscriminatory distribution formulas for unrouted outbound telegraph or record traffic and the division of revenues. This provision shall cease to have any force or effect at the end of the three-year period beginning on the date of enactment of this Act.

SEC. 6. Notwithstanding any other provision of law, the Federal Communications Commission shall not be authorized to act upon any application to provide international telegraph or record service which is filed by a domestic telegraph carrier pursuant to the Communications Act of 1934 until one hundred and twenty days after the date of enactment of this Act.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BAKER. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

OMNIBUS RECONCILIATION ACT OF 1981

Mr. BAKER. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Calendar Order No. 171, S. 1377, a bill to provide for reconciliation pursuant to title III of the first concurrent resolution on the budget for fiscal year 1982.

Further, Mr. President, I ask that today no action be taken relative to S. 1377, except for the disposition of a so-called leadership amendment to strike extraneous subject matter from the bill, that such amendment be the only amendment in order today, and that the amendment not be divisible; further, Mr. President, that the time on the leadership amendment and on all other amendments in the first degree be reduced to 1 hour; that the time on all amendments in the second degree, debatable motions, appeals, points of order, if submitted, be reduced to one-half hour, and that no unanimous-consent agreement relative to these reductions or any other time limitations on amendments be deemed to waive the germaneness requirements imposed for a reconciliation bill under the Budget Act.

Further, Mr. President, I ask that at no later than 10:30 a.m., tomorrow, June 23, 1981, the Senate resume consideration of S. 1377.

The PRESIDING OFFICER. Without objection, it is so ordered. The bill will be stated by title.

The legislative clerk read as follows:

A bill (S. 1377) to provide for reconciliation pursuant to title III of the First Concurrent Resolution on the budget for fiscal year 1982 (H. Con. Res. 115, Ninety-seventh Congress).

There being no objection, the Senate proceeded to consider the bill.

UP AMENDMENT NO. 171

Mr. BAKER. Mr. President, I send to the desk a leadership amendment cosponsored by the distinguished minority leader and me, the distinguished chairman of the Budget Committee, Senator DOMENICI, and the ranking member, Senator HOLLINGS.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

The Senator from Tennessee (Mr. BAKER) for himself, Mr. ROBERT C. BYRD, Mr. DOMENICI, and Mr. HOLLINGS, proposes an unprinted amendment numbered 171.

Mr. BAKER. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 146, delete lines 24 through 37.

On page 165, delete everything beginning on line 23 through and inclusive of page 168, line 19.

On page 183, delete lines 11 through 35.

On page 184, delete lines 24 through 35.

On page 288, delete lines 27 through 31.

On page 322, delete lines 30 through 34.

On page 170, on line 9, strike the phrase, ", nor may there be obligated budget authority,".

On page 170, strike line 10, beginning with the word "nor" and continuing through "$1,298,813,000".

On page 171, on line 23, strike the phrase ", nor may there be obligated budget authority,".

On page 171, on line 24, strike the phrase "nor shall outlays be in excess of $23,000,000,".

On page 169, line 5, strike beginning with the second comma and continuing through the end of the sentence and insert "in excess of $1,590,000."

On page 171, strike lines 29 through 30, beginning with the word "nor" and ending with the word "authority" and insert in lieu thereof, "budget authority".

On page 172, strike lines 9 through 10, beginning with the word "nor" and ending with the second "$5,000,000", and insert in lieu thereof, "in excess of $5,000,000".

On page 172, strike lines 24 through 25, beginning with the word "nor" and ending with "$8,523,293,C00", and insert in lieu thereof, "in excess of $8,762,069,000".

On page 184, strike lines 15 through 16, beginning with the word "nor" and ending with the word "$36,387,000" and insert in lieu thereof, "in excess of $31,552,000."

On page 184, strike lines 1 through 2, and insert in lieu thereof "in excess of $21,038,000."

On page 182, strike lines 22 and 23, beginning with the word "nor" and ending with "$4,518,601,000", and insert in lieu thereof, "in excess of $3,881,224,000".

On page 188, strike lines 20 through 22, and insert in lieu thereof:

"(d) Notwithstanding any other provision of law, there is authorized to be appropriated not to exceed $322,000,000 for fiscal year 1981 for programs of the Economic Development Administration."

On page 188, strike lines 26 through 29 and insert in lieu thereof:

"(b) Notwithstanding any other provision of law, there is authorized to be appropriated not to exceed $22,838,C00 for fiscal year 1981 to the Secretary of Commerce for programs for regional development."

On page 186, strike lines 29 through 36.

On page 189, strike lines 9 through 12 and insert in lieu thereof:

"(b) Notwithstanding any other provision of law, there is authorized to be appropriated for fiscal year 1981 not to exceed $14,700,000 to the President for area development programs of the Appalachian Regional Commission."

On page 189, strike lines 14 through 19.

On page 75 strike lines 38 through 40 and insert in lieu thereof,

"SEC. 323–12. Notwithstanding any other provision of law, the authorizations for appropriations for programs and activities administered by the Secretary for Housing and Urban Development in fiscal year 1981 are reduced by $5,552,000,000".

On page 181, strike lines 31 through 32, beginning with the word "nor" and ending with the word "be".

Mr. BAKER. Mr. President, with the reconciliation bill now before us, the Senate stands at the edge of an enormous legislative achievement. This measure responds to the demands of the American electorate that Federal spending be contained and controlled. It answers affirmatively the strong majority of voters who want the size of Government to be reduced. It is a vigorous, positive reply to the mandate of 1980.

Such a redirection is long overdue. And reconciliation is an appropriate mechanism for that purpose. Without a reconciliation process, the changes set forth in this bill would have been delayed, diluted, or would never have occurred.

Reconciliation is a means of looking at those changes in a total package rather than in a series of separate bills whose spending and programmatic implications are considered in isolation of one another. Packaging these measures provides a necessary coherence to our policy redirection. Without reconciliation, neither packaging nor coherence would have been possible.

Aside from its salutary impact on the budget, reconciliation also has implications for the Senate as an institution. So long as a preponderance of its subject matter has a budgetary impact, a reconciliation bill could contain nonbudgetary amendments to substantive law, and still be protected under the Budget Act. That notwithstanding, I believe that including such extraneous provisions in a reconciliation bill would be harmful to the character of the U.S. Senate. It would cause such material to be considered under time and germaneness provisions that impede the full exercise of minority rights. It would evade the letter and spirit of rule XXII.

It would create an unacceptable degree of tension between the Budget Act and the remainder of Senate procedures and practice. Reconciliation was never meant to be a vehicle for an omnibus authorization bill. To permit it to be treated as such is to break faith with the Senate's historical uniqueness as a forum for the exercise of minority and individual rights.

For principally these reasons, I have

labored with the distinguished minority leader, with the chairmen and ranking minority member of the Budget Committee, and with other committee chairmen to develop a bipartisan leadership amendment. This amendment will strike from the bill subject matter which all these parties can agree is extraneous to the reconciliation instructions set forth last month in House Concurrent Resolution 115. What will remain in the bill is directly responsive to these instructions, has a budgetary savings impact, and plainly belongs in a reconciliation measure.

The reconciliation bill which remains will strike the proper balance. It will make use of a controlled and expedited procedure to advance with coherence a budget package, and it will do so with due respect shown for the institutional concerns of the Senate. It will meet the requirements of the American people for prompt and substantive action, while avoiding the kind of overreaching that could have damaged the Senate and the budget process.

May I add, Mr. President, that I wish to extent my deep appreciation to the distinguished minority leader, the distinguished ranking minority member of the Budget Committee, the distinguished chairman of the Appropriations Committee, to the distinguished chairman of the Budget Committee, the chairman of the Energy Committee, and to other committees that have been most directly involved in this effort.

Mr. President, I believe it is in the very best traditions of the Senate that we strive on a bipartisan basis to try to make this system work rather than to try to make it fail to work.

I believe it is a good job. It is a full bipartisan effort to accomplish a stated purpose. I congratulate all Senators for their participation, and express my personal appreciation for their support and assistance.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished majority leader yield?

Mr. BAKER. I yield to the distinguished minority leader.

Mr. ROBERT C. BYRD. Mr. President, if the reconciliation bill is adopted in its present form, it will do violence to the budget reform process. The reconciliation measure contains many items which are unrelated to budget savings. This development must be viewed in the most critical light, to preserve the principle of free and unfettered debate that is the hallmark of the U.S. Senate.

The Congressional Budget and Impoundment Control Act of 1974 is a forward-looking measure that provides the Congress with the means to discipline itself with respect to Federal spending. Developed by former Senators Muskie and Bellmon, the budget process had been finely tuned by their successors, the distinguished Senator from New Mexico (Mr. DOMENICI) and the distinguished Senator from South Carolina (Mr. HOLLINGS.)

I have a personal familiarity with the Budget Act. I was chairman of the Rules Subcommittee of the Committee on Rules and Administration when the act was conceived. That subcommittee spent a great deal of time closing the loopholes in the nascent budget process. And I believe that we were successful in making the reconciliation process tightly restrictive. The provisions in the Budget Act that spell out the reconciliation process allow the Senate to make difficult decisions on Federal spending.

The ironclad parliamentary procedures governing the debate of the reconciliation measure should by no means be used to shield controversial or extraneous legislation from free debate. However, language is included in the reconciliation measure that would enact routine authorizations that have no budget impact whatsoever. In other cases, legislation is included that makes drastic alterations in current policy, yet, has no budgetary impact.

These gratuitous additions to the money-saving provisions of the reconciliation bill constitute a violation of the intent and spirit of the budget process, and impose a strain on the most important rules of this legislative body.

One practical effect of the extraneous language is to bypass the normal legislative process. The tried-and-true process of hearings, markups, floor debate, and floor amendment would be thrown into a cocked hat.

The authorizing committees would simply load their legislation willynilly on to each year's reconciliation bill. Such measures would be insulated from troublesome amendments, from the possibility of lengthy debate or a filibuster, and the chairmen and ranking members and the members of the Budget Committee would be helpless because that committee has no authority to add to or take away from the recommended revisions of the bills that are submitted to the Budget Committee by the authorizing committee.

The reconciliation bill, if it includes such extraneous matters, would diminish the value of rule XXII. The Senate is unique in the way that it protects a minority, even a minority of one, with regard to debate and amendment. The procedures that drive the reconciliation bill set limits on the normally unfettered process of debate and amendment, because policy matters that do not have clear and direct budgetary consequences are supposed to remain outside its scope.

The integrity of the budget process in the future is not bright if the Senate allows the process to be subverted in this fashion. What controversial measure will not be viewed as a future candidate for inclusion in a reconciliation bill? Perhaps a wholesale reform of the election process will find its way into reconciliation legislation or a major reorganization of the executive branch.

Under those circumstances, the legislative process could become an abomination. The rights of the minority and of each Senator would be trampled. It is not a strictly partisan minority that would be injured. It may well be that a regional minority of Senators is threatened with some bill that would do great harm to their area of the country. Should that be included in reconciliation, they would be powerless to stop or even slow its enactment. And the public would have even less chance to comment on the extraneous provisions, as the hearing process is short circuited by these procedures.

Amendments to the reconciliation bill are sharply limited. A single Senator, or a minority of Senators, would find it difficult to go through a giant reconciliation bill piecemeal and remove extraneous language during the 20 hours to which the bill is limited.

Therefore, I strongly believe that the Senate as an institution should take pains to avoid this pitfall. While it may seem convenient to circumvent the usual legislative process, I can think of no surer way to cause intolerable strains on the ability of the budget process to function efficiently and wisely. For that reason, I am cosponsoring a bipartisan amendment with the majority leader to delete some of the extraneous language from the reconciliation bill.

Another disturbing aspect of this reconciliation bill is the obligation limitations, many of which will have the effect of rescinding funds already appropriated, without benefit of the normal rescissions process. The caps on obligations might be called legislative impoundments. Even though the Congress has appropriated funds through the regular process, the obligation limitations prevent an agency from spending the money.

Obligation limitations of this kind essentially undo congressional appropriations action without adequate opportunities for debate and amendment. If Congress has appropriated certain funds, or made a rescission that is not as large as the administration has requested, the obligation limits provide OMB with impoundment authority. An appropriation or rescission is normally made only after extensive hearings and markups by the Appropriations Committees of both sides, followed by ample floor debate and amendment. The obligation caps that impound funds have been included in reconciliation without much notice or fanfare.

As a member of the Appropriations Committee, I am not sanguine about the use of a technique that would ratify an administration's rescission requests in a way that circumvents the normal and appropriate rescissions process. The Congress made a number of decisions in the newly enacted supplemental appropriations and rescissions bill that are undermined completely by obligation limitations in the reconciliation bill.

The strain of imposing backdoor rescissions and impoundments, when added to the blow to the legislative process and Senators' rights caused by the inclusion of many nonbudgetary matters in reconciliation bills, can cause the ultimate demise of the budget process. It will transform the legislative process and the budget process with it into a fiction and an empty exercise. It will reduce the rights of each Senator, particularly those in a minority. Rule XXII governing cloture will become a sham. The principle of free debate and unlimited amendment will be discarded.

We must avoid practices that will plunge the Senate into an exercise in irresponsibility. We must maintain the

integrity of the budget process and of the U.S. Senate.

The amendment offered by the majority leader and me omits several nonbudget related authorizations which should also be stricken from this bill. The fact that they were not included in the amendment should not be construed as accepting their inclusion in the bill. Negotiations are currently proceeding on these items, which include several communications deregulation provisions from the Commerce Committee, and a long list of housing provisions from the Banking Committee.

I expect that, at some point, there will be an effort to strike these items from the bill as well.

I congratulate the distinguished majority leader on the concern that he has expressed and on his efforts to remove from this bill the nonbudgetary items to which I have referred and to which he has referred. It was our hope that we could include other items that, for the moment, are not in our amendment.

I know that he shares with me the concern that the budget process may be undermined by this approach. I compliment him on the efforts that he is making to protect that process.

We have gone as far as we can go in this amendment, but we have not gone as far as we should go. That is not the fault of the majority leader, nor anyone in particular that I would want to single out. But it is something that we are going to have to give our closest attention to because, while it may be a convenience for any particular Senator today, or group of Senators or for any particular special interest in the country, to have a certain provision in this rescission bill, it may be that their ox will be gored the next time around and then it will not be so convenient for them, nor will it bode well for the budget process.

I thank the distinguished majority leader.

Mr. BAKER. I thank the minority leader.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, S. 1377, the Omnibus Reconciliation Act of 1981, is an historic piece of legislation. This bill will achieve the largest budget savings of any bill considered by this body.

This reconciliation bill represents the combined efforts of 13 Senate committees which have labored mightily over the past several weeks. These committees have reported savings in budget outlays of $1.6 billion in fiscal year 1981, $39.6 billion in fiscal year 1982, $46.1 billion in fiscal year 1983, and $54.0 billion in fiscal year 1984. In total, the savings in this bill will lower Government spending during the next 4 years $141.1 billion below what it would be without the changes in law included in S. 1377.

The bill before us was mandated by the first budget resolution, House Concurrent Resolution 115. That resolution noted the need to control Federal spending by invoking the reconciliation procedures contained in the Budget Act. The reconciliation provision of the first budget resolution instructed these 13 Senate committees to report changes in laws to achieve savings of $1.5 billion in fiscal year 1981, $35.2 billion in fiscal year 1982, $46.4 billion in fiscal year 1983, and $55.7 billion in fiscal year 1984. Over the 4-year period, the instructions required savings of $138.9 billion.

All of the committees deserve credit, Mr. President, for reporting savings which, in total, exceed the instructions by $2.3 billion over the fiscal year 1981 through 1984 period. These figures exclude the Appropriations Committee, which has already achieved its savings.

Mr. President, before proceeding further, let me note how far the Congress has come in the past year in controlling Federal spending. Last year, very few people thought the Congress was serious about controlling spending. In fact, until last year, reconciliation was an unknown word. There were those who said it would not work. But we made it work. We took an untried theory and turned it into a practical means for reducing Federal spending. In that first effort, the Congress, controlled by Democratic majorities in both Houses, I might add, passed the first reconciliation bill, saving over $6 billion in spending that otherwise would have occurred.

I am pleased that the Republicans have taken up where the Democrats left off. Along with the distinguished chairman of the Budget Committee, Senator DOMENICI, I cosponsored the original reconciliation resolution this year, Senate Concurrent Resolution 9 which was introduced on February 24, 1981. At that time I said that reconciliation will show that Congress has the will to cut spending. The bill before us now proves that the Congress does, indeed, have that will. We have heard the cries of the people for reduced spending, for cuts in Government programs, and we have responded. There can be no clearer sign of our desire to reduce Government spending than passing S. 1377.

It should be noted that all of the Senate committees have worked diligently on this bill. This bipartisan effort has produced a bill which, in total, exceeds its savings instructions. The chairman and ranking minority members deserve special credit for their efforts.

Especially deserving of credit is the chairman of the Budget Committee. Through his perseverence and tireless efforts, the Senate has before it a historic bill.

From my experience as chairman of the Budget Committee during the reconciliation process last year, I can assure the Senate that the chairman's task is not a small one. This bill is a tribute to the chairman and to the bipartisan spirit which has characterized the work of the Budget Committee and staff on this reconciliation bill.

While the bill exceeds its overall targets, I am concerned that some committees did not make the changes that are necessary to achieve their required savings in future years. The greatest shortfall is in the Governmental Affairs Committee, whose legislation falls short of its instruction by a total of $10.8 billion in fiscal years 1983 and 1984. I will support any amendment to rectify this shortcoming.

In summary, Mr. President, this bill is necessary if we are to reduce Government spending, lower the Federal deficit, and improve the economy. The bill is not a cure-all by itself, but it is an important and necessary step, and one that I fully support.

It is quite a task to consider these measures under limited time and still get specific issues resolved in order to come up with these savings. I again commend the committees and their chairmen and ranking members.

When the committees reported their legislation to the Budget Committee, we immediately noted that some of the committees had succumbed to the temptation of including in reconciliation authorizing legislation that had no budgetary connection whatsoever. In some cases not only did it yield no reduction in the budget, but, in some instances, it infringed upon the jurisdiction of other committees, especially, the Appropriations Committee. The Budget Committee unanimously agreed upon this language in reporting the bill:

> The Budget Committee believes that the inclusion of non-budgetary provisions in the Reconciliation bill is inconsistent with the spirit and letter of the Budget Act, damages the credibility of the Budget process, and could have the effect of circumventing rule XXII of the Standing Rules of the U.S. Senate. The Committee, therefore, has authorized the Chairman and Ranking Member to consult with the Chairmen and Ranking Members of committees which have submitted legislation, and with the Leadership, to identify any clearly extraneous matter in the bill, and to reach an agreement on any amendments which may be necesary to eliminate such matter from this bill. The Committee recommends that such amendments as agreed upon be adopted by the Senate.

This evening, Mr. President, I wish to thank our distinguished majority leader and our distinguished minority leader on their leadership in this particular score.

They, by introducing this amendment to strike clearly extraneous matter from the bill, are setting a precedent which will preserve the integrity of the U.S. Senate. The amendment shows the Senate's commitment not have any provisions in a reconciliation bill that contain no reconciliation connection, do not achieve budget savings or infringe upon another committee's jurisdiction.

We have eliminated provisions from several committees—save those pointed out by the minority leader just a moment ago—that should not be in reconciliation. In the instance of the Banking Committee it should be noted that the housing bill passed the U.S. Senate in the last 2 weeks. That is why we are negotiating on whether it is extraneous matter or not.

Let there not be any question about the position of the U.S. Senate on these matters. We are setting this precedent with respect to clearly extraneous matter so that the reconciliation process is not abused and the credibility of the budget process damaged.

I thank Senator BAKER and Senator BYRD. They have been working around the clock.

Having handled one of these reconciliation bills myself—between eight committees and some $8 billion—I appreciate the difficulty of trying to reconcile the approaches taken by 13 different committees and with that taken by the Appropriations Committee—which has already achieved its savings. To go through each of these items, is not easy and the chairman of the Budget Committee, Senator DOMENICI, has done a magnificent job. He deserves the gratitude of all of us in the Senate for his working this matter out and bringing the bill to the Senate.

I wholeheartedly join with the majority leader and the minority leader on this consent agreement so that we establish the precedent of not using the budget process, particularly the reconciliation process, in an incorrect fashion.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (UP No. 171) was agreed to.

Mr. BAKER. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ROBERT C. BYRD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. BAKER. Mr. President, I thank the distinguished ranking minority member of the committee and the former chairman of the committee who has had so much to do in making it possible to reach this point in our consideration.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from South Carolina (Mr. HOLLINGS) and commend him on the diligence he has shown in this respect and the concern that he has expressed with regard to the inclusion of the nonbudgetary matters in this bill. He has zealously guarded the integrity of the budget process. I know it is with great concern that he views what is happening here.

I wish to personally express my own gratitude to him for the service he has rendered. The Senate is in his debt.

The PRESIDING OFFICER. The distinguished majority leader is recognized.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, is there an order for the convening of the Senate on tomorrow?

The PRESIDING OFFICER. There is an order to convene the Senate at 9 a.m.

Mr. BAKER. Mr. President, I know of no further business to come before the Senate today.

PROGRAM

Mr. BAKER. Mr. President, on tomorrow, the Senate will convene at 9 a.m. There is a series of special orders which will end at 10:20 a.m. It is the intention of the leadership at that time, or prior thereto if circumstances dictate, to provide for a reasonable period for the transaction of routine morning business.

Under the order previously entered, the Senate will resume consideration at 10:30 a.m. of S. 1377, the reconciliation bill. It is expected that there will be several votes during the day tomorrow.

It is also expected that the Senate will be in reasonably late tomorrow in order to try and complete action on this measure before the Senate goes into recess for the Fourth of July period.

RECESS UNTIL 9 A.M. TOMORROW

Mr. BAKER. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the order previously entered, that the Senate stand in recess until the hour of 9 a.m. tomorrow.

The motion was agreed to; and the Senate, at 7:16 p.m., recessed until Tuesday, June 23, 1981, at 9 a.m.

NOMINATIONS

Executive nominations received by the Senate June 22, 1981:

AGENCY FOR INTERNATIONAL DEVELOPMENT

W. Antoinette Ford, of Michigan, to be an Assistant Administrator of the Agency for International Development, vice Joseph Coolidge Wheeler.

Francis Stephen Ruddy, of Texas, to be an Assistant Administrator of the Agency for International Development, vice Goler Teal Butcher, resigned.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

William E. Mayer, of California, to be Administrator of the Alcohol, Drug Abuse, and Mental Health Administration, vice Gerald L. Klerman, resigned.

VETERANS' ADMINISTRATION

Robert P. Nimmo, of California, to be Administrator of Veterans' Affairs, vice Joseph Maxwell Cleland, resigned.

U.S. SYNTHETIC FUELS CORPORATION

Robert A. G. Monks, of Maine, to be a member of the Board of Directors of the U.S. Synthetic Fuels Corporation for a term of 3 years, vice Frank Savage, resigned.

Victor M. Thompson, Jr., of Oklahoma, to be a member of the Board of Directors of the U.S. Synthetic Fuels Corporation for a term of 4 years (new position).

C. Howard Wilkins, of Kansas, to be a member of the Board of Directors of the U.S. Synthetic Fuels Corporation for a term of 5 years, vice Joseph Lane Kirkland, resigned.

Victor A. Schroeder, of Georgia, to be a member of the Board of Directors of the U.S. Synthetic Fuels Corporation for a term of 6 years (new position).

IN THE AIR FORCE

Gen. Richard H. Ellis, U.S. Air Force (age 61), for appointment to the grade of general on the retired list pursuant to the provisions of title 10, United States Code, section 8962.

The following-named officer under the provisions of title 10, United States Code, section 8066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 8066, in grade as follows:

To be general

Lt. Gen. Thomas M. Ryan, Jr. [redacted] FR, U.S. Air Force.

The following-named officer under the provisions of title 10, United States Code, section 8066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 8066, in grade as follows:

To be lieutenant general

Robert F. Coverdale [redacted] FR, U.S. Air Force.

IN THE ARMY

The following-named officer under the provisions of title 10, United States Code, section 3066, to be assigned to a position of importance and responsibility designated by the President under subsection (a) of section 3066, in grade as follows:

To be lieutenant general

Maj. Gen. Paul Scott Williams, Jr. [redacted] U.S. Army.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 22, 1981:

DEPARTMENT OF STATE

Daniel J. Terra, of Illinois, to be Ambassador at Large for Cultural Affairs.

Robert L. Brown, of Virginia, to be Inspector General of the Department of State and the Foreign Service (new position).

The above nominations were approved subject to the nominee's commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

John J. Knapp, of New York, to be General Counsel of the Department of Housing and Urban Development, vice Jane McGraw.